



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 679**

**[Docket No. 140304192-5999-02]**

**RIN 0648-BE05**

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; New Cost Recovery Fee Programs**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes regulations to implement cost recovery fee programs for the Western Alaska Community Development Quota (CDQ) Program for groundfish and halibut, and three limited access privilege programs: the American Fisheries Act (AFA), Aleutian Islands Pollock, and Amendment 80 Programs. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for the CDQ Program and limited access privilege programs. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. The Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Fishery

Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), and other applicable laws.

**DATES:** Effective [*INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (the Analysis) and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228

**SUPPLEMENTARY INFORMATION:**

NMFS manages the groundfish fisheries in the Federal exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut

fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act.

### **Statutory Authority**

The primary statutory authority for this action is section 304(d) of the Magnuson-Stevens Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act specifies that the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege (LAP) program and community development quota (CDQ) program that allocates a percentage of the total allowable catch (TAC) of a fishery to such program. Section 304(d)(2)(B) specifies that such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program.

Section 304(d)(2)(A)(i) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect fees to recover costs from any LAP program. Section 3 of the Magnuson-Stevens Act defines a "limited access privilege" as including "an individual fishing quota." Section 3 of the Magnuson-Stevens Act defines "individual fishing quota" as "a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as

described in section 305(i).” The Magnuson-Stevens Act and Federal regulations further define the terms “permit,” “limited access system,” “total allowable catch,” and “person.” These terms will be discussed in detail below.

Section 304(d)(2)(A)(ii) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect fees to recover costs from the CDQ Program for fisheries in which a percentage of the TAC of a fishery is allocated to the CDQ Program. Section 305(i) of the Magnuson-Stevens Act authorizes the CDQ Program and specifies the annual percentage of the TAC allocated to the CDQ Program in each directed fishery of the BSAI. Section 305(i) also specifies the method for further apportioning the TAC allocated to the CDQ Program to specific entities, called CDQ groups. NMFS previously implemented cost recovery fees for the amount of BSAI crab fishery TACs allocated to the CDQ Program under regulations implementing the Crab Rationalization Program (70 FR 10174, March 2, 2005, see regulations at § 680.44) under the authority of section 304(d)(2) of the Magnuson-Stevens Act. This final rule implements cost recovery fees under the authority of section 304(d)(2) of the Magnuson-Stevens Act for BSAI groundfish and halibut TACs allocated to the CDQ Program.

A more detailed description of the statutory authority can be found in the preamble of the proposed rule (80 FR 936, January 7, 2015), as well as in Section 1.1 of the Analysis prepared for this action.

### **Cost Recovery Fee Programs**

Cost recovery is the process by which NMFS recovers the actual costs associated with the management, data collection, and enforcement (also referred to as program costs) of a LAP or CDQ program. NMFS determines the costs based on the costs described in section 304(d) of the

Magnuson-Stevens Act, consistent with NOAA policy on cost recovery. LAP and CDQ Program costs are recovered annually through a fee paid by persons who hold a permit granting an exclusive harvesting privilege for a portion of the TAC in a fishery subject to cost recovery.

The cost recovery fees assessed cannot exceed the statutory limitation of 3 percent of the ex-vessel value of the fish subject to a cost recovery fee as specified in section 304(d) of the Magnuson-Stevens Act. Section 1.8 of the Analysis and the preamble to this proposed rule (80 FR 936, January 7, 2015) contain additional information on the costs that are subject to a cost recovery fee and current NOAA policy on the collection of cost recovery fees.

With this final rule, NMFS is implementing cost recovery fee programs for the AFA, Aleutian Islands Pollock, and Amendment 80 LAP Programs, and the CDQ Program. An effective cost recovery fee program requires calculating species ex-vessel values, using a standardized methodology to assess Program costs, assigning the appropriate fee to each person holding a permit, and ensuring that fees are submitted in full and on time. Below is a summary of the primary components of each cost recovery fee program (Tables 1 through 4). Each of these components is discussed in detail in the preamble to the proposed rule (80 FR 936, January 7, 2015), as well as the Analysis prepared for this action.

#### *Cost Recovery Fees*

Each calendar year, NMFS will determine the cost recovery fee that each Program must pay. The cost recovery fee for each Program will be based on costs incurred during the previous Federal fiscal year (from October 1 of the previous calendar year through September 30 of the current calendar year), and the ex-vessel value of the fish that are subject to a cost recovery fee during the current calendar year (from January 1 through December 31). The incurred costs that

can be recovered under a cost recovery program are described in Section 1.8.3 of the Analysis and the preamble to the proposed rule.

NMFS will calculate cost recovery fees only for fish that are landed and deducted from the TAC in the fisheries subject to cost recovery under the action. NMFS will not calculate cost recovery fees for any portion of a permit holder's exclusive harvest privilege that was not landed and deducted from the TAC. The permit holder refers to the person who holds the exclusive harvest privilege in the specific fishery. These methods for assessing cost recovery fees on landed catch and the designation of the permit holder are consistent with the cost recovery fee programs already implemented and NOAA policy guidance.

NMFS will calculate the cost recovery fee as a percentage of the ex-vessel value of allocated fish species harvested by the participants in each program. The use of a standard ex-vessel price will provide a consistent methodology to assess fees on all fishery participants and reduce administrative costs that would be incurred by collecting ex-vessel data from each fishery participant. The methods used to determine a standard ex-vessel price vary depending on the specific program subject to a cost recovery fee. NMFS will use existing data sources to determine a standard ex-vessel price for pollock (the Commercial Operators Annual Report), and halibut and sablefish (IFQ Buyer Report). NMFS will require a new report from processors who receive Pacific cod to determine a standard ex-vessel price for Pacific cod (Pacific Cod Ex-vessel Volume and Value Report). NMFS will also require a new report from Amendment 80 vessel operators to determine standard ex-vessel prices from a range of other species subject to cost recovery (First Wholesale Volume and Value Report). These two new volume and value reports are due by November 10 of each year.

NMFS will determine a cost recovery fee percentage applicable to the species subject to cost recovery for each LAP and the CDQ Program. The cost recovery fee percentage is the percentage of the ex-vessel value of species used to determine a cost recovery fee that must be paid to NMFS. NMFS will publish the cost recovery fee percentage for each program in a **Federal Register** notice each year by December 1. NMFS will also send a fee liability notice to each designated representative of the person liable for a cost recovery fee by December 1 of each year. The cost recovery fee liability notice will include the total estimated fees due to NMFS from the person liable for the fee for that calendar year. The cost recovery fee will be due by December 31 of each year.

For the first year of fee collection, NMFS will begin assessing costs for these cost recovery programs starting on the effective date of this final rule. The costs assessed under the first year of cost recovery fee program will be based on costs incurred by NMFS from the final rule effective date through September 30, 2016. NMFS will base the ex-vessel value of the fish used to determine the cost recovery fee on actual and estimated harvests from January 1, 2016, through December 31, 2016. NMFS will publish the cost recovery fee percentage for each Program in a **Federal Register** notice by December 1, 2016. NMFS will send each designated representative a fee liability notice by December 1, 2016. The cost recovery fee will be due on December 31, 2016.

Additional detail on how NMFS will calculate ex-vessel values, cost recovery fees, and the fee schedule is provided in Sections 1.7 and 1.10 of the Analysis and the preamble to the proposed rule (80 FR 936, January 7, 2015) and is not repeated here.

*AFA Cost Recovery Fee Program*

The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA limits entry by vessels and processors into all sectors of the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. The AFA defines the various sectors of the Bering Sea pollock fishery, determines what vessels and processors are eligible to participate in each sector, establishes allocations of Bering Sea pollock total TAC to each sector as directed fishing allowances, and establishes excessive share limits for harvesting pollock. The provisions of the AFA were incorporated into the FMP and its implementing regulations under authority of the Magnuson-Stevens Act. The AFA cost recovery fee program will apply to participants in the AFA pollock fishery.

As required by section 206(b) of the AFA, NMFS allocates a specified percentage of the Bering Sea directed pollock fishery TAC to each of the three AFA fishery sectors: 1) 50 percent to catcher vessels delivering to inshore processors, called the “inshore sector”; 2) 40 percent to catcher/processors and catcher vessels delivering to those catcher/processors, called the “catcher/processor sector”; and 3) 10 percent to catcher vessels harvesting pollock for processing by motherships, called the “mothership sector.”

Section 208 of the AFA specifies the vessels and processors that are eligible to participate in the inshore sector, the catcher/processor sector, and the mothership sector. Section 210 of the AFA authorizes the formation of fishery cooperatives in all sectors of the Bering Sea pollock fishery and provides flexibility to the Council and NMFS to govern the formation and operation of fishery cooperatives.



Under section 210(b), the AFA establishes additional qualifying criteria and operational restrictions on the formation and operation of cooperatives for the inshore sector. The AFA establishes a specific formula for making allocations of pollock to qualified inshore cooperatives. A catcher vessel with an AFA inshore endorsement may join an AFA inshore cooperative associated with an AFA inshore processor (AFA section 210(b); 50 CFR 679.4(l)(6)). For 2015, seven inshore cooperatives were formed by AFA eligible inshore catcher vessels and their partner inshore processors (<http://alaskafisheries.noaa.gov/sustainablefisheries/afa/15bsaicoopallocations.pdf>). Each inshore cooperative will be responsible for the payment of that cooperative's fee.

The catcher/processor sector has formed two cooperatives for managing the exclusive harvest allocation mandated for the catcher/processor sector under section 206(b) of the AFA—one cooperative for the catcher/processors and one cooperative for the catcher vessels harvesting pollock for processing by catcher/processors. These two cooperatives are associated through a joint agreement called the “Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative” to facilitate efficient harvest management and accurate harvest accounting between the participants in the catcher/processor sector. These two cooperatives jointly submit an annual cooperative report to the Council (see Cooperative Reports, NMFS Alaska Region Website, [http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa\\_sf.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa_sf.htm)). The catcher/processor sector also formed one entity to represent the catcher/processor sector for the purposes of receiving and managing their transferable Chinook salmon prohibited species catch (PSC) allocation under a program to minimize Chinook salmon bycatch in the pollock fishery (see the

final rule implementing Amendment 91 to the FMP, 75 FR 53026, August 30, 2010). This entity will be responsible for submitting the payment of the AFA catcher/processor fee under this rule.

All participants that harvest pollock allocated to the catcher/processor sector are members of the two cooperatives, except for one participant. Section 208(e)(21) of the AFA expressly limits the amount of harvest by the one participant in the catcher/processor sector who is not a member of a cooperative to 0.5 percent of the TAC apportioned to the catcher/processor sector, thereby providing an exclusive harvest privilege to all catcher/processor cooperative members. The participant that is not a member of a cooperative will not be subject to a cost recovery fee for its harvest of Bering Sea pollock under this rule because that vessel is not given an explicit allocation of pollock and is already subject to cost recovery fees under the Amendment 80 Program. Section 1.5.3 of the Analysis provides additional detail on allocations to the AFA catcher/processor sector.

The owners of all 19 catcher vessels eligible to deliver to a mothership in the Bering Sea pollock fishery have joined a single cooperative under section 208(c) of the AFA to coordinate harvests, the AFA Mothership Fleet Cooperative. This cooperative harvests the exclusive pollock allocation mandated for the mothership sector under section 206(b) of the AFA. The AFA Mothership Fleet Cooperative will be responsible for the payment of the AFA mothership cooperative fee.

NMFS recognizes that each AFA sector has slightly different management costs. This final rule establishes that NMFS will calculate fee percentage and fee liability separately for the catcher/processor sector, mothership sector, and inshore sector. NMFS estimates that annual fee

liabilities for each sector will range from 0.23 percent to 0.72 percent of the ex-vessel value of Bering Sea pollock.

**Table 1. Summary of the AFA Cost Recovery Fee Program Elements**

What species are subject to a cost recovery fee?	Bering Sea pollock
How is the standard price determined?	NMFS will calculate a standard price based on data from the Commercial Operators Annual Report (COAR) from the previous calendar year.
Are there any additional reporting requirements for AFA cooperatives to determine the standard price?	No
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Bering Sea pollock from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, for each AFA cooperative or sector and multiply that amount by the standard price determined by COAR data to calculate a standard ex-vessel value for each AFA cooperative or sector.
Who is responsible for submission of the fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	AFA Catcher/Processor Sector (1): The designated entity representative for the catcher/processor sector under § 679.21(f)(8)(i)(C). AFA Mothership Sector (1): The designated representative for the AFA Mothership Fleet Cooperative. AFA Inshore Sector (7): The designated representative on each AFA Inshore Catcher Vessel Cooperative Permit application.
When are the standard prices published in the <b>Federal Register</b> and when are the fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

*Aleutian Islands Pollock Cost Recovery Fee Program*

This cost recovery fee program will apply to participants in the Aleutian Islands pollock fishery. The Aleutian Islands Pollock Program allocates the Aleutian Islands directed pollock fishery TAC to the Aleut Corporation, consistent with the Consolidated Appropriations Act of 2004 (Pub. L. 108-109), and its implementing regulations. Annually, prior to the start of the pollock season, the Aleut Corporation provides NMFS with the identity of their designated representative. This person will be responsible for the submission of all cost recovery fees. The Aleutian Islands pollock fishing regulations are at § 679.20(a)(5)(iii).

Prior to 2015, Aleutian Islands pollock was not harvested due to restrictions imposed by Steller sea lion protection measures. Therefore, prior to 2015, NMFS reallocated the Aleutian Islands pollock allocation to the AFA Program in the Bering Sea. Changes in Steller sea lion protection measures effective in 2015 allow for a directed pollock fishery to occur in the Aleutian Islands (79 FR 70286, November 25, 2014). However, NMFS does not know whether participants will be able to successfully harvest the Aleutian Islands pollock because there has not been an Aleutian Islands pollock fishery since 1999. NMFS will reallocate any Aleutian Islands pollock not harvested in the Aleutian Islands to the AFA Program in the Bering Sea. Any pollock that NMFS reallocates from the Aleutian Islands Pollock Program to the AFA Program will be subject to cost recovery fees under the provisions of the AFA Program.

NMFS estimates that the cost recovery fee percentage applicable to Aleutian Islands pollock will be the same percentage applicable to Bering Sea pollock harvested by the AFA Program (Section 1.8.6.5 of the Analysis). Based on the information in the Analysis, NMFS assumes that the Aleutian Islands Pollock and the AFA Programs have similar management costs and ex-vessel values. NMFS will assess and determine a fee percentage specifically for Aleutian

Islands pollock if management requirements differ between the Aleutian Islands Pollock Program and the AFA Program. Estimates of recoverable costs will be determined once additional information on the management costs for the Aleutian Islands pollock fishery is available.

**Table 2. Summary of the Aleutian Islands Pollock Cost Recovery Fee Program Elements.**

What species are subject to a cost recovery fee?	Aleutian Islands pollock
How is the standard price determined?	NMFS will calculate a standard price based on data from the COAR from the previous calendar year. The standard price will be applied to all landings during a calendar year.
Are there any additional reporting requirements for the Aleut Corporation to determine the standard price?	No
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Aleutian Islands pollock from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by COAR data to calculate a standard ex-vessel value for the Aleut Corporation.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Aleut Corporation (1)
When are the standard prices published in the <b>Federal Register</b> and when are fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

This cost recovery fee program will apply to participants in the Amendment 80 fisheries. The Amendment 80 Program allocates groundfish fisheries TAC, other than Bering Sea pollock, to identified trawl catcher/processors in the BSAI. The Amendment 80 Program allocates a portion of the BSAI TACs of six species: Atka mackerel, Pacific cod, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. Amendment 80 vessel owners can harvest these species in cooperatives that receive an exclusive harvest privilege, or in an “open access” fishery that will not be subject to a cost recovery fee requirement.

All 27 vessels currently participating in the Amendment 80 Program and their vessel owners are members of cooperatives and are subject to a cost recovery fee. Each Amendment 80 cooperative is responsible for payment of any cost recovery fee, and each Amendment 80 cooperative will designate a person responsible for submitting its fee and provide NMFS with the identity of that person. NMFS estimates that annual fee liabilities for Amendment 80 cooperatives will range from 1.22 to 1.77 percent of the ex-vessel value of allocated species (Section 1.8.4.6 of the Analysis).

**Table 3. Summary of the Amendment 80 Cost Recovery Fee Program Elements.**

What species are subject to a cost recovery fee?	Amendment 80 species: BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI rock sole, and BSAI yellowfin sole.
--	--

How is the standard price determined?	<p>NMFS will calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Ex-vessel Volume and Value Report. The standard price will be applied to all landings during a calendar year.</p> <p>NMFS will calculate a standard price for all other species other than Pacific cod from the First Wholesale Volume and Value Report. The standard price will be applied to all landings during a calendar year, except for BSAI rock sole. For BSAI rock sole, NMFS will calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year.</p>
Are there any additional reporting requirements to determine the standard price?	Yes. Each Amendment 80 vessel owner that lands Amendment 80 species during a calendar year is required to submit a First Wholesale Volume and Value Report.
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of Amendment 80 species from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by the applicable volume and value report to calculate a standard ex-vessel value for each Amendment 80 cooperative.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Each Amendment 80 cooperative's designated representative listed on the Cooperative Quota (CQ) application (2)
When are the standard prices published in the <b>Federal Register</b> , and when are fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).
When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31 2016), and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .

### *CDQ Cost Recovery Fee Program*

This cost recovery fee program will apply to CDQ groups. The CDQ Program was implemented in 1992 to provide access to BSAI fishery resources to villages located in Western

Alaska. Since the implementation of the CDQ Program, Congress has amended the Magnuson-Stevens Act to define specific provisions of the CDQ Program. Section 305(i) of the Magnuson-Stevens Act identifies 65 villages eligible to participate in the CDQ Program and the six CDQ groups to represent these villages. CDQ groups receive exclusive harvesting privileges of the TACs for a broad range of crab species, groundfish species, and halibut. This final rule establishes a cost recovery fee program only for groundfish and halibut because CDQ crab cost recovery fees are already collected under existing regulations. Each CDQ group will be subject to cost recovery fee requirements, and the designated representative of each CDQ group will be responsible for submitting payment for its CDQ group. This is consistent with the method NMFS uses to collect fees for the crab CDQ cost recovery program. NMFS estimates that annual fee liabilities for a CDQ group will range from 0.73 to 1.33 percent of the harvested ex-vessel value of CDQ groundfish and halibut.

**Table 4. Summary of the CDQ Cost Recovery Fee Program Elements.**

What species are subject to a cost recovery fee?	BSAI halibut and groundfish species allocated to the CDQ Program: BSAI Arrowtooth Flounder, BSAI Atka mackerel, BSAI flathead sole, Bering Sea Greenland turbot, BSAI Pacific cod, Aleutian Islands Pacific ocean perch, BSAI pollock, BSAI rock sole, BSAI sablefish, and BSAI yellowfin sole.
--	---



How is the standard price determined?	<p>NMFS will calculate a standard price for BSAI Pacific cod based on data from the Pacific Cod Ex-vessel Volume and Value Report. The standard price will be applied to all landings during a calendar year.</p> <p>NMFS will calculate a standard price for all other species other than BSAI pollock, BSAI Pacific cod, BSAI sablefish, and BSAI halibut from the First Wholesale Volume and Value Report. The standard price will be applied to all landings during a calendar year, except for BSAI rock sole. For BSAI rock sole, NMFS will calculate one standard price for landings made from January 1 through March 31, and a separate standard price for landings made from April 1 through December 31 of each year.</p> <p>NMFS will calculate a standard price for BSAI pollock based on data from the COAR from the previous calendar year. The standard price will be applied to all landings during a calendar year.</p> <p>NMFS will calculate a standard price for BSAI sablefish and BSAI halibut from the IFQ Buyer Report. The standard price will be applied to all landings during a calendar year.</p>
Are there any additional reporting requirements from CDQ groups to determine the standard price?	No
How will NMFS determine the Standard Ex-vessel Value?	NMFS will add total reported landings of species subject to a CDQ cost recovery fee from January 1 through November 30, and estimate total landings in each year (beginning in 2016) from December 1 through December 31, if any, and multiply that amount by the standard price determined by the volume and value report, COAR Report, or IFQ Buyer Report applicable to that species to calculate a standard ex-vessel value for each CDQ group.
Who is responsible for fee payment and (how many cooperatives are estimated to receive a fee liability notice)?	Each CDQ group's designated representative (6).
When are the standard prices published in the <b>Federal Register</b> and when are the fee liability notices sent?	The standard prices are published in the <b>Federal Register</b> by December 1 of each calendar year, and the fee liability notices will be sent to each designated representative by December 1 of each year (beginning December 1, 2016).

When are fee payments due and how are they submitted?	Fee payments are due by December 31 of each year (beginning December 31, 2016), and must be submitted online. Submittal forms are available online at: <a href="http://www.alaskafisheries.noaa.gov">http://www.alaskafisheries.noaa.gov</a> .
---	--

## Response to Comments

NMFS published a proposed rule that describes in detail the statutory authority to implement cost recovery fee programs, the Programs affected by the implementation of a cost recovery fee program, and how NMFS will implement the new cost recovery fee programs, in the **Federal Register** on January 7, 2015 (80 FR 936). The 30-day comment period on the proposed rule ended February 6, 2015. NMFS received a total of three comment letters from three unique persons representing participants in programs that are subject to cost recovery under this final rule. The comment letters contained 24 substantive comments. A summary of the comments received and NMFS' responses follow.

### *Comments on NMFS' costs subject to recovery*

*Comment 1:* NMFS received several comments regarding the process for calculating costs subject to cost recovery. The issues raised in the comments include the following:

- Base fee liabilities on the incremental costs associated with management and enforcement of the specific LAP or CDQ Program.
- Do not assess costs attributed to the general management of the fisheries that cannot be directly attributed to the specific LAP or CDQ Program.
- Appropriately apportion costs among LAP and CDQ programs to ensure that costs applicable to one program are not attributed to another program.

- Do not include costs associated with deploying and debriefing observers in the cost recovery fee calculations since observer deployment and debriefing would have been implemented without the implementation of the LAP or CDQ programs.
- Provide detailed cost breakouts for each LAP and CDQ Program.

*Response:* Section 304(d)(2)(A) of the Magnuson-Stevens Act states that the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any limited access privilege program and community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

As stated in the preamble to the proposed rule, NMFS intends to employ the same accounting methods for the cost recovery fee programs established by this rule as NMFS has consistently used in cost recovery fee programs in the Alaska Region (Halibut and Sablefish Individual Fishing Quota (IFQ) Program, Crab Rationalization Program, and the Central Gulf of Alaska Rockfish Program). This methodology to assess cost recovery fees is consistent with the Magnuson-Stevens Act and current NOAA policy (NOAA Technical Memorandum NMFS-F/SPO-86, November 2007). The costs described in Section 1.8.3 of the Analysis and the preamble to the proposed rule provide the best available description of the costs subject to cost recovery for each LAP program and the CDQ Program. As explained in in Section 1.8.3 of the Analysis, NMFS will only assess costs that can be directly attributed to the specific LAP or CDQ Program.

NMFS agrees that costs should be accurately attributed to each CDQ and LAP program. As noted in the preamble to the proposed rule, NMFS will capture the incremental costs of managing the fisheries of each CDQ or LAP program through an established accounting system that allows NMFS to track labor, travel, and procurement specific to that program. This process is described in Section 1.8.3 of the Analysis. This accounting system will allow NMFS to properly apportion costs among the CDQ and LAP programs.

NMFS agrees that certain categories of observer costs should not be included in the fee calculation. For example, many catcher/processors operating in the directed pollock and non-pollock fisheries in the BSAI were required to carry an observer prior to the implementation of the AFA or the Amendment 80 Programs. Costs associated with the debriefing and training of one observer will not be assessed or included in the fee calculation. However, NMFS required additional observer coverage for implementation of the AFA and the Amendment 80 Programs (Section 1.8 of the Analysis). These LAP programs required the deployment of two observers on board each AFA catcher/processor or Amendment 80 vessel. NMFS will assess fees for costs necessary to debrief and train the second observer because those costs are incurred as a direct result of the implementation of those LAP programs.

NMFS agrees that information on the costs used to determine the fee should be disclosed annually. NMFS will make publically available an annual report that provides information on how the cost recovery fee was estimated for that year. This report will be structured like the cost recovery fee reports that are currently generated for the Halibut and Sablefish IFQ Program and Crab Rationalization Program. An example of the Halibut and Sablefish Cost Recovery Fee report for 2013 is available at <https://alaskafisheries.noaa.gov/ram/fees/feerpt2013.pdf>.

*Comment 2:* The cost recovery regulations should be revised to more clearly incorporate the Magnuson-Stevens Act's limitations on costs that may be recovered. To focus on truly recoverable costs, revise the regulations to incorporate the definition of "direct program costs" provided under the cost recovery rule established for certain Pacific Coast groundfish fisheries (78 FR 75269, December 11, 2013).

*Response:* This final rule already incorporates the section 304(d)(2)(B) Magnuson-Stevens Act limitation on the costs that may be recovered and clearly states that the fee percentage amount must not exceed 3 percent of the ex-vessel value of the species harvested under the Program. In this final rule at § 679.2, the definition of the fee percentage for each program limits the fee percentage to no greater than 3 percent. Additionally, the cost recovery regulations specific to each program state that the fee amounts must not exceed 3 percent, see this final rule at §§ 679.33(c)(1), 679.66(c)(1), 679.67(c)(1), and 679.95(c)(1).

NMFS' recoverable costs are limited by the Magnuson-Stevens Act. Section 304(d) of the Magnuson-Stevens Act states that the recoverable costs must be the actual costs directly related to the management, data collection, and enforcement of the CDQ or LAP programs. NMFS will use the accounting methods that have been developed for all other cost recovery programs in the North Pacific to determine the "direct program costs" that are recoverable, as described in the preamble to the proposed rule. NMFS made no changes to this final rule at §§ 679.33(c)(2)(ii), 679.66(c)(2)(ii), 679.67(c)(2)(ii), or 679.95(c)(2)(ii) because the direct program cost language is consistent with the Magnuson-Stevens Act, regulations implementing the other North Pacific cost recovery fee programs, and NOAA policy.

*Comment 3:* Explain the cause of the rapid increase in the Gulf of Alaska Rockfish Program cost recovery fee to 3 percent of its ex-vessel value. Ensure that a similar rapid and unanticipated increase in the fee percentage will not happen to the cost recovery fees for these CDQ and LAP programs.

*Response:* The preamble to the final rule that implemented the Gulf of Alaska Rockfish Program (Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska) stated that, given the relatively small value of the Rockfish Program relative to anticipated administrative costs, cost would likely exceed 3 percent of the ex-vessel value of the Rockfish Program, therefore, it would be likely that the costs recovery fee for the Rockfish Program would be 3 percent, the statutory limit established by the Magnuson-Stevens Act (76 FR 81263, December 27, 2011). Cost recovery fee percentages in the Rockfish Program have ranged from 1.4 percent in 2012 (the year the Rockfish Program cost recovery fee was implemented), to 3 percent in 2015 (the most recent year for which a cost recovery fee was assessed). NMFS attributes the increase in the fee percentage in 2015 primarily to a decrease in the ex-vessel value of rockfish, and to a lesser extent, an increase in NMFS' management and enforcement costs (80 FR 6053, February 4, 2015).

As stated in Section 1.8.4.6 (Amendment 80), Section 1.8.6.5 (AFA/Aleutian Islands pollock), and Section 1.8.5.5 (CDQ) of the Analysis, NMFS does not anticipate that the factors that led to the increase in the Rockfish Program cost recovery fee percentage are likely to exist in the CDQ and LAP programs subject to cost recovery under this rule. The referenced sections of the Analysis show that the CDQ and LAP Program fisheries have substantially higher ex-vessel values than the ex-vessel value of the Rockfish Program fishery. The Rockfish Program fishery

ex-vessel value fell from about \$14.3 million in 2012 to about \$6.3 million in 2014. Section 1.8.4.6 (Amendment 80), Section 1.8.6.5 (AFA/Aleutian Islands pollock), and Section 1.8.5.5 (CDQ) of the Analysis state that NMFS does not expect future ex-vessel values or anticipated costs subject to cost recovery to change in a way that would result in a 3 percent cost recovery fee for these Programs.

Section 1.8.1 of the Analysis states that the Crab Rationalization Program has not experienced an increase in its fee percentage, but the Halibut and Sablefish IFQ Program has had an increase in its fee percentage over time. In the Crab Rationalization Program, the fee percentage declined over time due to a variety of factors, including (1) increasing TACs for various crab species, (2) increasing ex-vessel prices for various crab species, and (3) decreasing management costs. In the Halibut and Sablefish IFQ Program, the fee percentage has increased due to costs remaining fairly constant and ex-vessel value decreasing due to reduced harvests that have not been off-set by increases in ex-vessel prices.

*Comments on the CDQ Cost Recovery Fee Program*

*Comment 4:* NMFS' definition of a "person" as each CDQ group that is issued an annual CDQ allocation is consistent with the way that each CDQ group manages its allocations individually for all other purposes.

*Response:* NMFS agrees. Regulations at § 679.2 define a CDQ group as "an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D)." The six eligible CDQ groups are listed in Table 7 to 50 CFR part 679. Each CDQ group is responsible for a fee payment, and each CDQ group must designate a representative who is responsible for submitting a fee payment for that CDQ group (see regulations at § 679.33(a)).

*Comments on the AFA Cost Recovery Fee Program*

*Comment 5:* The Bering Sea pollock directed fishing allowance does not meet the Magnuson-Stevens Act's definition of individual fishing quota because it is not a permit. The directed fishing allowance does not allow any person "to harvest a quantity of fish" for that person's "exclusive use." The directed fishing allowance is the amount of fish available to be harvested with a permit and therefore is a management restriction on a group of vessels rather than a permit. That is exactly how NMFS' regulation at § 679.20(a) describes the pollock directed fishing allowance.

*Response:* Section 3 of the Magnuson-Stevens Act defines an individual fishing quota as "a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person." According to § 679.2, a permit means documentation granting permission to fish.

The harvest specifications, with the AFA directed fishing allowance entitling the catcher/processor sector to harvest a quantity of fish for its exclusive use, is the individual fishing quota and documentation granting permission to fish. NMFS publishes harvest specifications each year in the **Federal Register** that allocate a specific percentage of the pollock TAC to the AFA sectors, called the directed fishing allowance, for exclusive use by eligible AFA permit holders (see the most recent example at Table 4, 80 FR 11919, March 5, 2015; corrected 80 FR 13787, March 17, 2015). The harvest specifications with the directed fishing allowance is a permit that authorizes the AFA sectors to harvest a portion of the pollock TAC each year.



Federal regulations at § 679.20(a)(5)(i)(A)(4) specify that the catcher/processor sector allocation is 40 percent of the directed fishing allowance that is allocated to AFA catcher/processors and AFA catcher vessels that deliver to catcher/processors. The AFA catcher/processor sector has exclusive use of its directed fishing allowance because the catcher/processors that are eligible to participate are specified in the AFA, FMP, and associated regulations. The exclusive quantity of fish allocated to the AFA catcher processor sector is then harvested by those specified in the FMP and regulations according to contractual arrangement among the members of that sector.

*Comment 6:* The Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative (Cooperative Agreement) does not constitute a "person."

*Response:* Based on this public comment, NMFS realizes that the proposed rule was not sufficiently specific in explaining who the person is that receives the individual fishing quota and is therefore responsible for the cost recovery fee for the AFA catcher/processor sector.

Regulations at § 679.2 define a person as "any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments." A similar definition of a "person" is in section 3 of the Magnuson-Stevens Act.

As explained in response to Comment 5, the directed fishing allowance is an individual fishing quota. NMFS allocates the directed fishing allowance to the AFA catcher/processor sector. NMFS considers the AFA catcher/processor sector an entity and therefore a person under

the Magnuson-Stevens Act. The AFA catcher/processor sector also 1) shares common ownership of vessels, 2) enters into contracts that allow the catcher/processors to harvest the catcher vessel allocation, 3) participates in incentive plan agreements to avoid Chinook salmon, and 4) submits one salmon avoidance report and one annual cooperative report for the AFA catcher/processor sector each year. The contracts establishing these relationships among members describe and provide for allocations of pollock and salmon to specific vessel owners and operators. Section 1.6.3.3 of the Analysis describes the harvest of catch in the AFA catcher/processor sector in greater detail, and the ability of the AFA catcher/processor sector members to precisely harvest the sector's exclusive pollock allocation.

Under Amendment 91 to the FMP, members of the AFA catcher/processor sector also formed one entity to represent the AFA catcher/processor sector for the purposes of receiving and managing their transferable Chinook salmon PSC allocation under the regulations at § 679.21(f)(8)(i)(C). The members of the AFA catcher/processor sector created a contract that, among other things, lists the vessel owners represented by the entity, and submitted an application to NMFS under § 679.21(f)(8)(ii). NMFS has approved the application for the entity representing the AFA catcher/processor sector. The contract also designates an entity representative and an agent for service of process. Currently, all eligible members of the AFA catcher/processor sector are represented by the entity. Entity participants cannot change during a fishing year. To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in § 679.21(f)(8)(ii)(F), by December 1.

NMFS has modified this final rule to clarify that the entity representative under § 679.21(f)(8) will be the designated representative responsible for submitting the cost recovery fee payment for the AFA catcher/processor sector. See Changes from the Proposed Rule, below, for a complete description of the changes NMFS made to this final rule in response to comments on the AFA catcher/process sector.

*Comment 7:* The pollock directed fishing allowance is allocated to AFA catcher/processor vessels rather than to the Cooperative Agreement. Even if the pollock directed fishing allowance qualifies as a “permit” and the catcher/processor sector’s Cooperative Agreement constitutes a “person,” the asserted permit is not held by the alleged person.

*Response:* Each year, NMFS allocates the pollock directed fishing allowance to the AFA catcher/processor sector under Federal regulations § 679.20(a)(5)(i)(A)(4), as required by section 206(b)(2) of the AFA. Each year, NMFS also allocates Chinook salmon PSC to the AFA catcher/processor sector under Amendment 91 to the FMP and § 679.21(f). Once the catcher/processor sector receives the sector’s pollock directed fishing allowance for exclusive harvest and the sector’s Chinook salmon PSC allocation, the AFA catcher/processor sector members divide these allocations among themselves.

As explained in the response to Comment 5, the annual harvest specifications with the directed fishing allowance is an IFQ to the AFA catcher/processor sector. As explained in the response to Comment 6, the “person” who receives the exclusive harvest privilege for the purposes of cost recovery is the catcher/processor sector that is eligible to harvest pollock from that sector’s directed fishing allowance defined in section 206(b)(2) of the AFA.

*Comment 8:* The Bering Sea pollock directed fishing allowance provided to the AFA sectors was not created under a limited access system and could not have been created under such a system because it went into effect during the moratorium on individual fishing quotas.

*Response:* In 2007, Congress adopted the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA, Pub. L. No. 109-479) to amend the Magnuson-Stevens Act. In the MSRA, Congress amended the Magnuson-Stevens Act to include language applicable to limited access systems and limited access programs.

In section 3(27) of the Magnuson-Stevens Act, Congress defined “limited access system” as “a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.” Although the AFA was adopted and implemented through the FMP before 2007, the AFA Program meets this definition of a limited access system. The AFA Program is a system that limits participation in the Bering Sea pollock fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulations. The AFA specified sector allocations and eligibility criteria for vessels to harvest pollock in each of the specified sectors (section 206 and section 208 of the AFA, 16 USC 1851 statutory note). The eligibility criteria and requirements in the AFA were incorporated into the FMP, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and the Fishery Management Plan for the Scallop Fishery Off Alaska (Amendments 61/61/13/8, respectively). NMFS manages the AFA Program through the FMPs and their implementing regulations (67 FR 79692, December 30, 2002).

NMFS is implementing the cost recovery program for the AFA under authority of section 304(d) of the Magnuson-Stevens Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act, which was adopted as part of the MSRA, authorizes and requires the Secretary to collect a cost recovery fee for limited access privilege programs. In section 3(26) of Magnuson-Stevens Act, Congress defined the term “limited access privilege” and specifically included “individual fishing quota.”

The AFA Program is a limited access privilege program because 1) NMFS issues a permit as part of a limited access system established by the AFA Program, 2) this permit allows the harvest of a quantity of pollock representing a portion of the TAC managed under the AFA Program, and 3) this permit is issued for exclusive use by a person, the AFA catcher/processor sector. Therefore, NMFS is implementing cost recovery fees for the AFA catcher/processor sector as authorized and required in section 304(d)(2) of the Magnuson-Stevens Act.

Further, the AFA does not prohibit the Secretary from imposing cost recovery requirements on participants in the AFA catcher/processor sector. Section 213(b) of the AFA states that, except for the measures required by this subtitle [subtitle II, Bering Sea Pollock Fishery], nothing in the subtitle shall be construed to limit the authority of the Council or the Secretary under the Magnuson-Stevens Act to approve conservation and management measures as part of a fishery management plan and to give effect to measures in those plans. Therefore, NMFS may implement the requirements of section 304(d) of the Magnuson-Stevens Act and establish a cost recovery program for participants in the AFA Program, including the AFA catcher/processor sector.

As for the moratorium on IFQ programs, section 303(d)(1)(A) of the 1996 Magnuson-Stevens Act (Section 108(e) of the Sustainable Fisheries Act, Pub. L. 104-297) prohibited the Council from submitting and the Secretary from approving or implementing before October 1, 2000, any plan amendment or regulations that created a new individual fishing quota program. On December 21, 2000, Congress extended the moratorium until October 1, 2002, in the Consolidated Appropriations Act of 2001 (Section 144(a), Pub. L. 106-554). The moratorium ended on October 1, 2002, and was not extended again by Congress.

During the moratorium on IFQ Programs, on October 21, 1998, Congress adopted the AFA and explicitly directed the Council and NMFS to implement, by January 1, 1999, the provisions of the AFA allocating a portion of the TAC of BSAI pollock to the catcher/processor sector (Section 206 of the AFA, Pub. L. 105-277, 16 USCA 1851 note). In the Consolidated Appropriations Act of 2001, the same Act where Congress extended the moratorium on IFQ programs, Congress also mandated that all BSAI groundfish management measures, which included the AFA management measures, in effect as of July 15, 2000, be extended through the end of 2001 (Section 209(c)(3), Pub. L. 106-554). On November 28, 2001, Congress made key provisions of the AFA permanent, including the pollock allocation to the catcher/processor sector, in section 211 of the Department of Commerce and Related Agencies Appropriation Act of 2002 (Pub. L. 107-77).

While the permanent AFA management program was under analysis and development, NMFS met the statutory deadlines in the AFA on an interim basis through several emergency interim rules starting in January 1999 (64 FR 3435, January 22, 1999) that were extended through the end of 2002 (67 FR 34860, May 16, 2002). The Secretary approved the FMP

amendments implementing the AFA on February 27, 2002, and NMFS published final implementing regulations for the AFA on December 30, 2002, after the moratorium ended (67 FR 79692). The Administrator, Alaska Region, NMFS, determined that the FMP amendments were necessary for the conservation and management of the groundfish, crab, and scallop fisheries off Alaska and that they are consistent with the Magnuson-Stevens Act and other applicable laws (67 FR 79692, December 30, 2002).

By adopting the AFA in 1998, by mandating its implementation in 1999, and by making it permanent in 2001, Congress in effect adopted an exception to the moratorium on IFQ programs for the AFA. Further, NMFS did not adopt permanent regulations implementing the AFA until after the IFQ moratorium ended.

*Comment 9:* Imposing cost recovery on vessel owners in the AFA catcher/processor sector who voluntarily end “a race for fish” creates a disincentive to rationalize through private cooperation.

*Response:* The AFA, not the vessel owners in the AFA catcher/processor sector, ended the “race for fish.” As explained in response to Comment 8, the AFA, and the implementing FMP amendments and regulations, created a limited access privilege program. The AFA Program required a fixed allocation of pollock to specific vessels that are eligible to participate in the fishery. The AFA allocated 40 percent of the annual pollock TAC to catcher/processors and catcher vessels that harvest pollock for processing by catcher/processors and the AFA named the specific vessels that are eligible to harvest that allocation. Additionally, ending the race for fish resulted in substantial economic benefits to fishery participants (Section 1.5.3.1 of the Analysis).

*Comment 10:* If the Pacific whiting catcher/processor sector that currently operates off the west coast in the waters under the jurisdiction of the Pacific Fishery Management Council was not considered to be a LAP program prior to 2011, then why is the AFA catcher/processor sector considered a LAP program? NMFS should identify any material differences in management of the AFA catcher/processor sector today and the Pacific whiting catcher/processor sector prior to 2011.

*Response:* The primary material difference between the Pacific whiting fishery and the AFA catcher/processor sector is that the Pacific whiting fishery is not managed under the AFA. The AFA Program is a limited access privilege program because the AFA mandated allocations and specifically named eligible participants. The AFA and Federal regulations at § 679.20(a)(5)(i)(A)(4) allocate 40 percent of the directed fishing allowance to the AFA catcher/processor sector and AFA catcher vessels delivering to the catcher/processors. The AFA catcher/processor sector has exclusive use of its directed fishing allowance because the catcher/processors that are eligible to participate are specified in section 208(e) of the AFA and Federal regulations at § 679.4(l)(2), and the catcher vessels that are eligible to deliver to those catcher/processors are specified in section 208(b) of the AFA and Federal regulations at § 679.4(l)(3)(i)(A). The AFA catcher/processor sector manages its exclusive directed fishing allocation for the benefit of its members.

For a description of the management of the Pacific whiting catcher/processor sector that operates off the west coast in the waters under the jurisdiction of the Pacific Fishery Management Council, please see the proposed rule to establish a trawl rationalization program for the Pacific Coast groundfish fishery (75 FR 32994, June 10, 2010).



*Comment 11:* NMFS defines the person responsible for paying the cost recovery fee applicable to the AFA catcher/processor sector in the proposed rule at § 679.66(a)(1)(ii). This regulation should be revised to read “the person designated as the representative of the Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative.”

*Response:* Based on this and similar comments from the same commenter, regarding the person responsible for paying the cost recovery fee, NMFS has modified this final rule to specify the AFA catcher/processor sector’s designated representative responsible for paying the cost recovery fee. Under the Amendment 91 implementing regulations, the AFA catcher/processor sector has already designated an entity for the management of the Chinook salmon PSC that represents all the participants in the sector. Use of the entity representative resolves the confusion over who the designated representative is for the AFA catcher/processor sector that is responsible for submitting the cost recovery fee payment. NMFS has modified this final rule at § 679.66(a)(1)(ii) to clarify that the entity representative under § 679.21(f)(8)(i)(C) will be the designated representative responsible for submitting the cost recovery fee payment. See response to Comment 6 for additional information.

For the AFA catcher/processor sector, the proposed rule specified that the representative responsible for submitting the cost recovery payment for all Bering Sea pollock landings made under the authority of their cooperative is the person designated as the representative of the listed AFA catcher/processors and catcher vessels that deliver to them. However, the proposed rule did not include a mechanism for designating this representative to NMFS. Since public comments expressed concern with the appropriate representative for the AFA catcher/processor sector,

NMFS modified this final rule to provide clarity. With this change, the AFA catcher/processor sector will use its existing entity and entity representative that the AFA catcher/processor sector has already designated with NMFS under the implementing regulations for Amendment 91 to submit the fee.

*Comment 12:* In the proposed rule at §§ 679.66(c)(2), 679.66(c)(2)(iii)(B), 679.66(c)(3)(i), and 679.66(c)(5)(iii), the references to a cooperative of listed AFA catcher/processors and catcher vessels delivering to catcher/processors should be revised to read “the Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative” or, where appropriate, to the representative of that agreement. References to “an AFA cooperative,” “an AFA cooperative representative,” and “cooperative” in the proposed rule at § 679.66(c)(4) and (5)(i) should also include references to the Cooperative Agreement or, where appropriate, the agreement’s representative.

*Response:* This final rule at § 679.66(c) governs the calculation of the AFA catcher/processor sector fee percentage and fee liability determination. In the proposed rule, NMFS had used cooperative as a general term applicable to the three AFA sectors. However, the use of the term cooperative for the AFA catcher/processor sector generated concern, as reflected in this public comment. Based on this and similar comments from the same commenter, NMFS has modified this final rule to specify that NMFS will calculate the AFA fee percentage for the AFA catcher/processor sector. NMFS changed §§ 679.66(c)(2) introductory text, 679.66(c)(2)(iii)(B), 679.66(c)(3)(i), 679.66(c)(4), and 679.66(c)(5)(i) and (iii) to add language specifying the entity representative for the AFA catcher/processor sector and stating that these

paragraphs are applicable to the AFA catcher/processor sector. See response to Comments 6 and 11 for additional information on the entity representative for the AFA catcher/processor sector.

*Comment 13:* The definition of “AFA fee liability” at § 679.2 should be revised to mean “the amount of money ... owed to NMFS by an AFA cooperative or the Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative ....”

*Response:* NMFS has changed the definition of “AFA fee liability” at § 679.2 in this final rule to clarify that the AFA fee liability means the amount of money for Bering Sea pollock cost recovery, in U.S. dollars, owed to NMFS by an AFA cooperative or AFA sector as determined by multiplying the appropriate AFA standard ex-vessel value of landed Bering Sea pollock by the appropriate AFA fee percentage. For consistency, NMFS also changed the definition of “AFA fee percentage” at § 679.2 in this final rule to clarify that the AFA fee liability applies to an AFA cooperative or AFA sector. See response to Comment 11 for additional detail.

*Comment 14:* Change the proposed rule at § 679.66(d) to add the representative of the Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative as the designated representative for the AFA catcher/processor sector. Make this change at §§ 679.66(d)(3), 679.66(d)(3)(i), 679.66(d)(3)(ii), 679.66(d)(4), 679.66(d)(5), and 679.66(d)(6).

*Response:* This final rule at § 679.66(d) governs the underpayment of the cost recovery fee liability. In the proposed rule, NMFS used cooperative as a general term applicable to the three AFA sectors and their unique associations. However, the use of the term cooperative for the AFA catcher/processor sector generated a number of public comments from one commenter.

NMFS agrees that the proposed rule language § 679.66(d) should be more specific regarding the designated representative for the AFA catcher/processor sector. However, NMFS disagrees that the appropriate designated representative for the AFA catcher/processor sector is the representative of the Cooperative Agreement.

Based on this and Comments 6, 11, 12, and 13, NMFS has modified this final rule to specify that the designated representative for the AFA catcher/processor sector is the entity representative defined at § 679.21(f)(8)(i)(C). NMFS changed this final rule at §§ 679.66(d)(3), 679.66(d)(3)(i), 679.66(d)(3)(ii), 679.66(d)(4), 679.66(d)(5), and 679.66(d)(6) to add language specifying the entity representative for the AFA catcher/processor sector and that these paragraphs are applicable to the AFA catcher/processor sector.

*Comment 15:* References to “an AFA cooperative,” “an AFA cooperative representative,” and “cooperative” in the proposed rule at §§ 679.66(e) and 679.66(f) should also include references to “the Cooperative Agreement between Offshore Pollock Catchers’ Cooperative and Pollock Conservation Cooperative” or, where appropriate, the agreement’s representative.

*Response:* This final rule at §679.66(e) and (f) governs over payment and appeals, respectively. NMFS disagrees that the Cooperative Agreement is the appropriate entity for the AFA catcher/processor sector for reasons explained in the response to Comment 11. However, NMFS changed this final rule at § 679.66(e) and (f) to clarify that the designated representative is the appropriate person for activities regulated by § 679.66(e) and (f).

*Comment 16:* In § 679.66(g) Administrative Fees, the reference to the account drawn on to pay the “CDQ fee liability” should refer to the “AFA fee liability.”

*Response:* NMFS removed paragraph (g) Administrative Fees from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. These paragraphs addressed administrative fees if the account drawn on to pay the cost recovery fee liability has insufficient funds to cover the transaction or if the account becomes delinquent. These paragraphs are not necessary because the Debt Collection Improvement Act of 1996, as explained in the Treasury Financial Manual Part 4, Chapter 4000, generally requires Federal agencies to transfer any nontax debt to U.S. Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for debt collection services. After transfer, Fiscal Service takes appropriate action to service, collect, compromise, or suspend or terminate collection action on the debt. NMFS then renumbered paragraph (h) as paragraph (g) Annual report.

*Comment 17:* The regulations should clarify that the person designated as the representative of the Cooperative Agreement between Offshore Pollock Catchers' Cooperative and Pollock Conservation Cooperative is a representative of that agreement solely for purposes of payment of cost recovery fees.

*Response:* In this final rule at § 679.66(a)(1)(ii), the person responsible for submitting the cost recovery fee is the person designated as the representative of the entity representing the AFA catcher/processor sector under § 679.21(f)(8)(i)(C).

*Comments on the Amendment 80 Cost Recovery Fee Program*

*Comment 18:* Use the Commercial Operator's Annual Report (COAR) to determine the standard ex-vessel price for Amendment 80 species and remove the requirement that Amendment 80 cooperatives submit the First Wholesale Volume and Value Report. The new reporting requirement is burdensome, redundant, and will require additional costs for NMFS.

These additional costs will result in additional fee liabilities for the Amendment 80 cooperatives. COAR data are adequate for determining the standard price for species covered by the First Wholesale Volume and Value Report and can be obtained with less cost.

*Response:* NMFS considered using COAR for all species and all CDQ and LAP programs that would be subject to the new cost recovery regulations (see Section 1.7.2.1 of the Analysis). NMFS selected using COAR data only for the AFA and Aleutian Islands Pollock Programs because these are single species fisheries. As noted in Section 1.7.2.2.1 of the Analysis, there is not substantial variation in the pollock ex-vessel price from year to year. Therefore, the standard ex-vessel price is unlikely to impact the cost recovery fee that any person would be required to pay. Also, because a single price is set for all Bering Sea AFA pollock landed and only pollock is used to determine the cost recovery fee, the amount of the pollock each person harvests determines the percentage of the cost recovery fee each AFA person must pay.

In contrast, the Amendment 80 and CDQ Programs are multispecies programs and the variation in the ex-vessel price of a species and the proportion of species harvested by an Amendment 80 cooperative or CDQ group can affect the total fee liability due. Section 1.7.2 of the RIR/FRFA and the preamble to the proposed rule show that the ex-vessel price of species covered by the Pacific Cod Ex-vessel Volume and Value Report and the First Wholesale Volume and Value Report can vary substantially from year to year, and this variation would have an impact on the fees that each person in these programs would be liable to pay. Using COAR data from the previous year may not reflect the ex-vessel prices that exist in the year that the catch subject to cost recovery occurs. Therefore, NMFS is requiring that Amendment 80 cooperatives

submit a First Wholesale Volume and Value Report for species subject to a cost recovery fee for species other than BSAI halibut, BSAI Pacific cod, BSAI pollock, and BSAI sablefish. NMFS collects data on BSAI halibut and BSAI sablefish through existing data collection methods that provide more timely data than that provided by the COAR. NMFS will collect data for BSAI Pacific cod using a separate Pacific Cod Ex-vessel Volume and Value Report.

The First Wholesale Volume and Value Report allows NMFS to collect price and quantity data for the current year's fishery (as required under the Magnuson-Stevens Act) to determine the portion of the total cost recovery fee that each person is required to pay. NMFS must have this information to fulfill its obligation in assessing each person the required fee. The data collected from the First Wholesale Volume and Value Report is the minimum amount of information needed to determine each person's fee liability for Amendment 80 species and species other than BSAI halibut, BSAI Pacific cod, BSAI pollock, and BSAI sablefish.

NMFS agrees that collecting these data through the First Wholesale Volume and Value Report will increase the Amendment 80 sector cost recovery fee and increase the reporting burden on industry. NMFS considered implementing monthly reporting requirements for the First Wholesale Volume and Value Report similar to the IFQ program's Volume and Value Reports. However, to reduce the reporting burden and reduce the overall costs to the Amendment 80 participants, NMFS determined that an annual First Wholesale Volume and Value Report would provide sufficient information to collect the cost recovery fees and reduce administrative costs relative to a monthly reporting requirement. Overall, the cost that NMFS is likely to incur to maintain and process the First Volume Wholesale Volume and Value Report is only a small proportion of NMFS' total costs to manage the Amendment 80 and CDQ Programs.

*Comment 19:* There is no need to collect data to determine a standard ex-vessel price for rock sole harvests during the first quarter (January 1 through March 31), and a separate standard ex-vessel price for harvests for the remainder of the year. The intra-annual ex-vessel price fluctuations for rock sole have been limited in recent years due to the decline in the rock sole and roe market. The average annual rock sole prices are sufficient for the Amendment 80 sector to determine the standard ex-vessel price.

*Response:* Table 1-26 of the Analysis provides a summary of the estimated monthly rock sole ex-vessel prices. Table 1-26 shows that the difference in rock sole ex-vessel prices from the first quarter of a year relative to the rest of the year have declined. However, there is still a substantial difference in the estimated ex-vessel prices during the first quarter and the remainder of the year. Even in the most recent year of complete ex-vessel price data (2013), there was still a 20 percent variation in price between the first quarter of the year and the remainder of the year. Because this difference continues to persist, NMFS intends to collect ex-vessel data for rock sole for the first quarter and for all remaining quarters, as described in proposed rule.

If the price premium for rock sole in the first quarter of the year continues to decline, NMFS could consider modifying the First Wholesale Volume and Value Report in the future. The information collected in the First Wholesale Volume and Value Report will allow NMFS to monitor the rock sole ex-vessel prices and determine if a change in reporting is appropriate.

*Comment 20:* Clarify in this final rule the term harvested fish for Amendment 80 vessels. NMFS should only assess fees against fish that were retained and offloaded from the vessel.

*Response:* Section 304(d)(2)(B) of the Magnuson-Stevens Act states that a cost recovery fee “shall not exceed 3 percent of the ex-vessel value of fish harvested under any such



program.” This rule defines the fish harvested and subject to a cost recovery fee as all AFA Program, Aleutian Islands Pollock Program, Amendment 80 Program, or CDQ Program landings debited against that AFA cooperative or sector, Aleut Corporation, Amendment 80 cooperative, or CDQ group’s allocations, respectively (see regulations at §§ 679.66(c)(5)(i) for AFA, 679.67(c)(5)(i) for Aleutian Islands pollock, 679.95(c)(5)(i) for Amendment 80, and 679.33(c)(5)(i) for CDQ).

For catcher/processor vessels that harvest fish subject to a cost recovery fee, NMFS uses information currently collected from at-sea scales and onboard observers to determine the amount and species composition of fish landed and debited from the applicable CDQ or LAP program allocation. Catcher/processors are not currently required to submit information on the weight and species composition of fish retained and offloaded. Establishing an offload reporting requirement and subsequent monitoring requirements would result in additional costs to NMFS. These costs would be included in the calculation of the cost recovery fee for the applicable CDQ or LAP program because NMFS would be requiring an offload report and monitoring requirement solely to monitor compliance with regulations necessary for CDQ or LAP program cost recovery. These additional costs are not necessary because information currently collected from at-sea scales and onboard observers provides a less costly independent source of information on the amount and species composition of fish harvested that are subject to a cost recovery fee. For catcher vessels, NMFS uses data from the processor receiving the fish (i.e., a fish ticket) to determine the amount and species composition of fish subject to a cost recovery fee.

*Comment 21:* Grant the Amendment 80 Program the same exception to the requirement to pay the fee liability in full by December 31 as granted to the AFA catcher/processor sector. The Amendment 80 Program should receive a proportion of its quota that matches the proportion of fees paid by the deadline (i.e., if an Amendment 80 cooperative pays only 80 percent of its fee liability, then NMFS would issue only 80 percent of the cooperative quota allocation to that cooperative). It would be appropriate and fair to grant this same exception because of difficulties associated with the timing of internal fee collection and unplanned increases in fees or decreases in fish values that may result in insufficient inseason fee collections from cooperative members.

*Response:* This final rule at § 679.66(d)(3)(ii) provides that if the AFA catcher/processor sector pays only a portion of its AFA fee liability, the Regional Administrator may release a portion of the Bering Sea pollock allocation equal to the portion of the fee liability paid.

Section 1.10.1.1, Section 1.10.3.1, and the Executive Summary of the Analysis and the preamble to the proposed rule explain that NMFS can release a percentage of the allocation of catch that is equal to the percentage of the cost recovery fee only for single species LAP programs. The Amendment 80 LAP Program is a multi-species LAP program. Withholding a portion of the allocation for an Amendment 80 cooperative would be complicated by the fact that each Amendment 80 species has a different ex-vessel value and members within the cooperative are allocated different amounts of Amendment 80 quota share. These allocations yield different amounts of Amendment 80 cooperative quota (CQ) when the Amendment 80 quota share is assigned to an Amendment 80 cooperative. Therefore, NMFS could not conclusively determine how much of a specific Amendment 80 species CQ allocation should be withheld.

For example, if an Amendment 80 cooperative paid only 90 percent of its fee liability, it is not clear what portion of the Amendment 80 CQ would match the percentage of the cost recovery fee paid. Making this determination would require assumptions and would risk NMFS withholding species that do not match the cooperative allocations associated with the unpaid cost recovery fee. Because of this uncertainty, NMFS will require full payment of the cost recovery fee for the Amendment 80 sector prior to releasing any of the cooperative's annual CQ. The cooperative contract should address the payment of the cost recovery fee and persons that do not meet the terms of the contract should be subject to penalties outlined in the contract.

*Comment 22:* The Analysis prepared for this action should be revised to include some additional information on how potential reductions to halibut PSC limits would affect the overall revenues and the potential cost recovery fee percent a CDQ or LAP program would have to pay in the future. Specifically, the Analysis prepared for this action should describe the potential impact of halibut PSC reductions on the cost recovery fee percentage paid by the Amendment 80 Program.

*Response:* Section 1.11 of the Analysis acknowledges that management actions recommended by the Council and implemented by NMFS could affect the total amount harvested by these LAP and CDQ programs. Future management measures applicable to LAP and CDQ programs could increase or reduce costs, or increase or reduce the ex-vessel value of fisheries subject to cost recovery. These future management actions could result in either an increase or a decrease in the cost recovery fee percentage applicable to LAP or CDQ programs.

The Council has recommended and NMFS is reviewing reduced halibut PSC limits applicable to the vessels participating in the LAP and CDQ programs covered by this action. On

November 16, 2015, NMFS published a proposed rule to reduce halibut PSC limits (80 FR 71650). NMFS and the Council prepared a draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) to consider the impacts of that action. The draft EA/RIR/IRFA states that halibut PSC limit reductions could result in an increase in the cost recovery fee percentage due to the decreased harvests that may occur if halibut PSC limits constrain the ability of vessels to fish. We refer the reader to that EA/RIR/IRFA for additional details, see the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

As the commenter states, changes in the halibut PSC limits applicable to Amendment 80 cooperatives could reduce the amount of the TAC harvested in these fisheries, and therefore would affect the fee percentage that Amendment 80 vessels would pay. Reduced catch could be partially offset by an increase in prices, but the world market for these fish and the wide availability of substitute products indicate that an increase in price due to reduced supply is unlikely. Given the estimated cost recovery fee of 1.62 percent for the Amendment 80 Program, the value of the fishery would need to decrease by about 50 percent, assuming the agency costs remain constant, before the maximum 3 percent cost recovery fee limit is reached.

*Comment 23:* Clarify regulations at § 679.95(b)(2)(iii) and § 679.95(c)(5)(iii) to specify who will calculate the fee liability for each Amendment 80 cooperative, NMFS or the Amendment 80 cooperative representative. Regulations at § 679.95(b)(2)(iii) state that the Amendment 80 cooperative representative determines the fee liability. Regulations at § 679.95(c)(5)(iii) state that NMFS will determine the fee liability.

*Response:* NMFS determines the fee liability owed under each LAP or CDQ program. NMFS also determines the standard prices for landings under each program. Regulations at § 679.95(b) pertain to NMFS' determination of the Amendment 80 standard ex-vessel value. The comment is correct that the proposed rule at § 679.95(b)(2)(iii) incorrectly explained that an Amendment 80 cooperative representative determines the Amendment 80 fee liability. The fee liability determination is in the regulations at § 679.95(c). These regulations explain that NMFS determines the fee liability. In response to this comment, NMFS changed this final rule at § 679.95(b)(2)(iii) to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS' determination of the Amendment 80 standard ex-vessel prices.

NMFS noticed this same error in the proposed rule at § 679.33(b)(2)(iii) that applies to the determination of the CDQ standard prices. NMFS changed this final rule at § 679.33(b)(2)(iii) to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS's determination of the CDQ standard prices.

*Comment 24:* Regulations at § 679.95(g) incorrectly contain a reference to pay the "CDQ fee liability" because this regulation applies to the Amendment 80 Program.

*Response:* NMFS removed paragraph (g) Administrative Fees from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. See response to Comment 16.

### **Changes from the Proposed Rule**

This final rule includes changes to particular sections of the regulatory text and amendatory instructions published in the proposed rule.

NMFS removed paragraph (g) *Administrative fees* from each cost recovery program at §§ 679.33, 679.66, 679.67, and 679.95. These paragraphs addressed administrative fees if the

account drawn on to pay the cost recovery fee liability has insufficient funds to cover the transaction or if the account becomes delinquent. These paragraphs are not necessary because the Debt Collection Improvement Act of 1996, as explained in the Treasury Financial Manual Part 4, Chapter 4000, generally requires Federal agencies to transfer any nontax debt to U.S. Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for debt collection services. After transfer, Fiscal Service takes appropriate action to service, collect, compromise, or suspend or terminate collection action on the debt. NMFS then renumbered paragraph (h) as paragraph (g) *Annual report*.

NMFS removed from paragraph (e), in §§ 679.33, 679.66, 679.67, and 679.95, the sentence that NMFS may deduct payment processing fees from any fees returned due to over payment. This additional sentence is not necessary because processing costs due to over payment are nominal with improvements in methods to collect fees.

In addition to these two changes, NMFS also made some non-substantive minor technical corrections to the regulatory text.

NMFS made substantive changes to this final rule in response to public comments. These changes improve the functioning of the cost recovery programs implemented with this final rule. All the specific regulation changes, and the reasons for making these changes, are contained under Response to Comments, above. This section provides a summary of the changes made to this final rule in response to public comment.

#### *CDQ cost recovery changes*

- In this final rule at § 679.33(b)(2)(iii), NMFS corrected this paragraph to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS' determination of the CDQ standard prices in response to Comment 23.

*AFA cost recovery changes*

- In this final rule at § 679.2, NMFS modified the definitions of AFA fee liability and AFA fee percentage to clarify that these terms apply to an AFA cooperative or AFA sector in response to Comment 13.
- In this final rule at § 679.66(a)(1)(ii), NMFS clarified that the entity representative under § 679.21(f)(8)(i)(C) will be the AFA catcher/processor sector's designated representative for submission of the cost recovery fee in response to Comment 11.
- In this final rule at § 679.66(d)(3), NMFS clarified that the AFA catcher/processor sector receives the Bering Sea pollock allocation and that the AFA catcher/processor sector entity representative under § 679.21(f)(8)(i)(C) submits the fee payment in response to Comment 14.
- To match the changes to § 679.66(a)(1)(ii), NMFS also changed this final rule as follows. These changes are discussed in detail in the responses to Comments 11, 12, 13, 14, and 15.
  - §§ 679.66(a)(2), (a)(3), (a)(4), (b)(1), (c)(4), (c)(5)(v), (d)(4), (d)(5), and (d)(6), (e), and (f) were changed to replace "cooperative representative" with "designated representative;"

- § 679.66(b)(2)(i), (c)(5)(i), (d)(5), (d)(6) and (e) were changed to add “or AFA sector;” and
- § 679.66(c)(2) introductory text, (c)(2)(iii)(B), (c)(3)(i) and (c)(5)(iii) were changed to replace references to listed AFA catcher/processors and high seas catcher vessels that deliver to them with “AFA catcher/processor sector.”

*Amendment 80 cost recovery changes*

- In this final rule at § 679.95(b)(2)(iii), NMFS corrected this paragraph to remove language pertaining to the fee liability and to clarify that this paragraph applies to NMFS’ determination of the Amendment 80 standard ex-vessel prices in response to Comment 23.

*OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)*

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Administrator, Alaska Region, NMFS, has determined that this final rule is necessary for the conservation and management of the groundfish and halibut fisheries and that it is consistent with the FMP, the



National Standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Final Regulatory Flexibility Analysis*

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action.

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the United States Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis.

Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in this final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for

preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

#### *Need for and Objectives of the Rule*

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here.

#### *Public and Chief Counsel for Advocacy Comments on the Proposed Rule*

NMFS published a proposed rule on January 7, 2015 (80 FR 936). An IRFA was prepared and summarized in the “Classification” section of the preamble to the proposed rule. The comment period closed on February 6, 2015. NMFS received three public comment letters, containing 23 separate comments on the proposed rule. These comments did not address the IRFA. The economic impacts of the rule were addressed in the comments by requesting that NMFS clearly define the costs that are subject to the rule. One comment specifically requested information on how BSAI halibut PSC reductions being considered by the Council and Secretary would impact the overall profitability of the Amendment 80 vessels, which are not considered small entities under the Small Business Administration Guidelines. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

#### *Number and Description of Small Entities Regulated by the Action*

This analysis considers the active fleet in 2013, which is the most recent year for which size, revenue, and affiliation data were all available. The only small entities directly regulated by

this rule are the six CDQ groups—the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen’s Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. Through the CDQ Program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, halibut quota, and halibut and crab PSC limits, to these six CDQ groups. These groups represent 65 villages and maintain a non-profit status. Each of the CDQ groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a “small entity” under the Small Business Administration’s definition for “small organization.” The proceeds from the CDQ allocations must be used to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. Section 2.6 of the Analysis prepared for the proposed rule provides more information on these entities (80 FR 936, January 7, 2015).

All other entities that are directly regulated through this rule are not small entities under the SBA definitions. This action would regulate Amendment 80, AFA cooperatives, and AFA sectors, and the vessels that are harvesting exclusive harvest privileges under the Amendment 80 and AFA Programs; The Aleut Corporation; and processors and motherships that receive CDQ Pacific cod deliveries and trawl-caught Pacific cod. The SBA defines a small commercial finfish fishing entity as one that has annual gross receipts, from all activities of all affiliates, of less than \$20.5 million (79 FR 33647, June 12, 2014). None of these entities are considered to be small entities based on the SBA’s size standard.

#### *Recordkeeping and Reporting Requirements*

This action modifies recordkeeping or reporting requirements so that sufficient data are available to determine the cost recovery fee and standardized prices in the time frame required under the Magnuson-Stevens Act. No small entity is subject to additional reporting requirements. Shorebased processors will be required to submit ex-vessel Volume and Value Reports for all CDQ groundfish landings and all BSAI Pacific cod trawl landings. Each Amendment 80 catcher/processor will be required to submit a First Wholesale Volume and Value Report for all groundfish species, except Pacific cod, harvested under the Amendment 80 and CDQ programs. The information to be collected is described in Section 1.7.2.1 of the Analysis.

The only additional recordkeeping requirements for small entities are the bookkeeping skills necessary for the six CDQ groups to submit payment for their cost recovery fees. NMFS will calculate the fee amount that each CDQ group owes. The designated representative of each group is then required to ensure the timely submission of the fee payment.

*Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities*

A FRFA must the outline steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The action is the implementation of the Magnuson-Stevens Act's mandatory cost recovery fees for LAP and CDQ programs.

No alternatives or options were identified that would have accomplished the action's objectives while reducing the potential economic impact on small entities relative to the preferred alternative. NMFS has determined that the minimum amount of data necessary to calculate the cost recover fees as mandated under the Magnuson-Stevens Act would be collected through volume and value reports. Collecting the minimum amount of data necessary from the fewest persons possible is beneficial to all entities.

The economic impact on directly regulated small entities is the implementation of a cost recovery fee mandated under the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that participants in limited access privilege programs and the CDQ Program pay up to 3 percent of the ex-vessel value of the fish they are allocated to recover the actual costs that are directly related to the management, data collection, and enforcement of the programs specific costs that are incurred by the management agencies. Given the specific requirements of the Magnuson-Stevens Act to implement a cost recovery fee, no other alternatives would accomplish the stated objective. Each CDQ group is required to submit its own fee payment using a payment system approved by NMFS.

For all directly regulated entities NMFS considered and analyzed a range of specific options to determine standard prices for calculating standard ex-vessel value data, dates for volume and value report and fee submission, and other details of the fee collection process described in the Analysis. NMFS selected those options that would minimize the reporting burden and costs on small entities consistent with the stated objective when possible.

Specifically, NMFS considered options to use COAR data to determine standard prices and standard ex-vessel values for all species subject to cost recovery, but did not select that

option for species other than BSAI pollock because it could impact the fee liability each person would be required to pay. NMFS did select options that minimized reporting requirements on small entities by using existing data sources (e.g., COAR for BSAI pollock, and the IFQ buyer report for BSAI sablefish and BSAI halibut). NMFS also selected dates for the submission of reports that provided the most current data available to allow fee liabilities to be calculated on a timely basis. These dates would minimize the potential impact on small entities relative to other dates considered. NMFS will provide annual reports to the persons subject to the cost recovery fee and other interested stakeholders to help provide transparency in the fee liability determination.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see ADDRESSES).

#### *Collection-of-Information Requirements*

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved under the following OMB control numbers.

OMB Control No. 0648-0318

With this action, the payment and observer fee submittal (15 minutes) is removed from this collection and added to the new fee collection.

OMB Control No. 0648-0398

With this action, this IFQ Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648-0401

Public reporting burden per response is estimated to average eight hours for Cooperative Contract. This information collection is revised by adding to the Cooperative Contract the obligation of AFA cooperative members to ensure full payment of cost recovery fees.

OMB Contract No. 0648-0545

With this action, two forms -- the Rockfish Volume and Value Report (two hours per response) and the payment and fee submittal (10 minutes per response) are removed from this collection.

OMB Control No. 0648-0565

Public reporting burden per response is estimated to average two hours for Application for Amendment 80 Cooperative Quota; the Cooperative Agreement is an attachment to this application. This information collection is revised by adding to the Cooperative Agreement the obligation of AFA cooperative members to ensure full payment of cost recovery fees.

OMB Control No. 0648-0570

With this action, the Crab Rationalization Program Cost Recovery collection is removed and superseded by the new cost recovery collection.

OMB Control No. 0648-0711

This new information collection is created by combining all existing Alaska Region fee information collections with the observer fee submission. Public reporting burden per response is estimated to average one minute for cost recovery fee or observer fee submission; five minutes for value and volume report; and four hours for appeal of an incomplete payment of a cost recovery fee or observer fee.

Estimates for public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

## **List of Subjects**

### *15 CFR Part 902*

Reporting and recordkeeping requirements.

### *50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 29, 2015.



---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

**Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE  
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

- a. Revise entries for “679.5(a)”; “679.5(c), (e), and (f)”; “679.5(d)”; and “679.5(l)(7);
- b. Add entries in alphanumeric order for “679.5(u)” and “679.33”;
- c. Revise entries for “679.43”; “679.45”; “679.55”; and “679.65”;
- d. Add entries in alphanumeric order for “679.66”; “679.67”; “679.85”; and “679.95”;
- e. Remove the entries for “680.5(f)”; “680.5(g)”; and “680.5(m)”;
- f. Add an entry in alphanumeric order for “680.5(f), (g), and (m)”.

The revisions and additions read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
679.5(a)	-0213, -0269, and -0272
* * * * *	
679.5(c), (e), and (f)	-0213, -0272, -0330, -0513, and -0515
679.5(d)	-0213 and -0515
* * * * *	
679.5(l)(7)	-0711
* * * * *	
679.5(u)	-0206 and -0711
* * * * *	
679.33	-0711
* * * * *	
679.43	-0272, -0318, -0334, -0401, -0545, -0565, -0569, and -0711
679.45	-0272, -0592, and -0711
* * * * *	
679.55	-0206, -0272, and -0711
* * * * *	
679.65	-0213, -0515, and -0633
679.66	-0711
679.67	-0711
* * * * *	
679.85	-0545
* * * * *	
679.95	-0711
* * * * *	
680.5(f), (g), (m)	-0711
* * * * *	

**Title 50—Wildlife and Fisheries**

## **PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

3. The authority citation for part 679 continues to read as follows:

16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

4. In § 679.2, add definitions for “AFA fee liability”; “AFA fee percentage”; “AFA pollock equivalent pounds”; “AFA standard ex-vessel value”; “AFA standard price”; “Aleutian Islands pollock equivalent pounds”; “Aleutian Islands pollock fee liability”; “Aleutian Islands pollock fee percentage”; “Aleutian Islands pollock standard ex-vessel value”; “Aleutian Islands pollock standard price”; “Amendment 80 equivalent pounds”; “Amendment 80 fee liability”; “Amendment 80 fee percentage”; “Amendment 80 standard ex-vessel value”; “Amendment 80 standard price”; “CDQ equivalent pounds”; “CDQ fee liability”; “CDQ fee percentage”; “CDQ standard ex-vessel value”; and “CDQ standard price” in alphabetical order to read as follows:

### **§ 679.2 Definitions.**

\* \* \* \* \*

*AFA fee liability* means the amount of money for Bering Sea pollock cost recovery, in U.S. dollars, owed to NMFS by an AFA cooperative or AFA sector as determined by multiplying the appropriate AFA standard ex-vessel value of landed Bering Sea pollock by the appropriate AFA fee percentage.

*AFA fee percentage* means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the AFA fee liability for an AFA cooperative or AFA sector.

\* \* \* \* \*

*AFA pollock equivalent pounds* means the weight recorded in pounds for landed AFA pollock and calculated as round weight.

*AFA standard ex-vessel value* means the total U.S. dollar amount of landed Bering Sea pollock as calculated by multiplying the number of landed pounds of Bering Sea pollock by the appropriate AFA standard price determined by the Regional Administrator.

*AFA standard price* means the price, in U.S. dollars, for landed Bering Sea pollock, in AFA pollock equivalent pounds, as determined by the Regional Administrator.

\* \* \* \* \*

*Aleutian Islands pollock equivalent pounds* means the weight recorded in pounds for landed Aleutian Islands pollock and calculated as round weight.

*Aleutian Islands pollock fee liability* means the amount of money for Aleutian Islands directed pollock cost recovery, in U.S. dollars, owed to NMFS by the Aleut Corporation as determined by multiplying the appropriate standard ex-vessel value of its landed Aleutian Islands pollock by the appropriate Aleutian Islands pollock fee percentage.

*Aleutian Islands pollock fee percentage* means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Aleutian Islands pollock fee liability for the Aleut Corporation.

*Aleutian Islands pollock standard ex-vessel value* means the total U.S. dollar amount of landed Aleutian Islands pollock as calculated by multiplying the number of landed pounds of Aleutian Islands pollock by the appropriate Aleutian Islands pollock standard price determined by the Regional Administrator.

*Aleutian Islands pollock standard price* means the price, in U.S. dollars, for landed Aleutian Islands pollock, in Aleutian Islands pollock equivalent pounds, as determined by the Regional Administrator.

\* \* \* \* \*

*Amendment 80 equivalent pounds* means the weight recorded in pounds for landed Amendment 80 species CQ and calculated as round weight.

*Amendment 80 fee liability* means the amount of money for Amendment 80 cost recovery, in U.S. dollars, owed to NMFS by an Amendment 80 CQ permit holder as determined by multiplying the appropriate standard ex-vessel value of landed Amendment 80 species CQ by the appropriate Amendment 80 fee percentage.

*Amendment 80 fee percentage* means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the Amendment 80 fee liability for an Amendment 80 CQ permit holder.

\* \* \* \* \*

*Amendment 80 standard ex-vessel value* means the total U.S. dollar amount of landed Amendment 80 species CQ as calculated by multiplying the number of landed Amendment 80 equivalent pounds by the appropriate Amendment 80 standard price determined by the Regional Administrator.

*Amendment 80 standard price* means the price, in U.S. dollars, for landed Amendment 80 species, in Amendment 80 equivalent pounds, as determined by the Regional Administrator.

\* \* \* \* \*

*CDQ equivalent pounds* means the weight recorded in pounds, for landed CDQ groundfish and halibut, and calculated as round weight.

*CDQ fee liability* means the amount of money for CDQ groundfish and halibut cost recovery, in U.S. dollars, owed to NMFS by a CDQ group as determined by multiplying the appropriate standard ex-vessel value of landed CDQ groundfish and halibut by the appropriate CDQ fee percentage.

*CDQ fee percentage* means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use in calculating the CDQ groundfish and halibut fee liability for a CDQ group.

\* \* \* \* \*

*CDQ standard ex-vessel value* means the total U.S. dollar amount of landed CDQ groundfish and halibut as calculated by multiplying the number of landed CDQ equivalent pounds by the appropriate CDQ standard price determined by the Regional Administrator.

*CDQ standard price* means the price, in U.S. dollars, for landed CDQ groundfish and halibut, in CDQ equivalent pounds, as determined by the Regional Administrator.

\* \* \* \* \*

5. In § 679.5, add paragraph (u) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(u) *BSAI Cost Recovery Volume and Value Reports*—(1) *Pacific Cod Ex-vessel Volume and Value Report*—(i) *Applicability*. A shoreside processor designated on an FPP, or a mothership designated on an FFP, that processes landings of either CDQ Pacific cod or BSAI

Pacific cod harvested by a vessel using trawl gear must submit annually to NMFS a complete Pacific Cod Ex-vessel Volume and Value Report, as described in this paragraph (u)(1), for each reporting period for which the shorebased processor or mothership receives this Pacific cod.

(ii) *Reporting period.* The reporting period of the Pacific Cod Ex-vessel Volume and Value Report shall extend from January 1 to October 31 of the year in which the landings were made.

(iii) *Due date.* A complete Pacific Cod Ex-vessel Volume and Value Report must be received by NMFS no later than November 10 of the year in which the processor or mothership received the Pacific cod.

(iv) *Information required.* (A) The submitter must log in using his or her password and NMFS person ID to submit a Pacific Cod Ex-vessel Volume and Value Report. The User must review any auto-filled cells to ensure that they are accurate. A completed report must have all applicable fields accurately filled-in.

(B) *Certification.* By using the NMFS person ID and password and submitting the report, the submitter certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The submitter must complete and submit online to NMFS the Pacific Cod Ex-vessel Volume and Value Report available at <https://alaskafisheries.noaa.gov>.

(2) *First Wholesale Volume and Value Report*—(i) *Applicability.* An Amendment 80 vessel owner that harvests groundfish species, other than Pacific cod, must submit annually to NMFS a complete First Wholesale Volume and Value Report, as described in this paragraph

(u)(2), for each reporting period for which the Amendment 80 vessel harvests groundfish species, other than Pacific cod.

(ii) *Reporting period.* (A) The reporting period of the First Wholesale Volume and Value Report for all species except rock sole shall extend from January 1 to October 31 of the year in which the landings were made.

(B) The first reporting period of the First Wholesale Volume and Value Report for rock sole shall extend from January 1 to March 31, and the second reporting period shall extend from April 1 to October 31.

(iii) *Due date.* A complete First Wholesale Volume and Value Report must be received by NMFS no later than November 10 of the year in which the Amendment 80 vessel received the groundfish species, other than Pacific cod.

(iv) *Information required.* (A) The Amendment 80 vessel owner must log in using his or her password and NMFS person ID to submit a First Wholesale Volume and Value Report. The vessel owner must review any auto-filled cells to ensure that they are accurate. A completed report must have all applicable fields accurately filled-in.

(B) *Certification.* By using the NMFS person ID and password and submitting the report, the Amendment 80 vessel owner certifies that all information is true, correct, and complete to the best of his or her knowledge and belief.

(v) *Submittal.* The Amendment 80 vessel owner must complete and submit online to NMFS the First Wholesale Volume and Value Report available at <https://alaskafisheries.noaa.gov>.



6. In § 679.7, add paragraphs (c)(6), (d)(8), (k)(9), (l)(6), (o)(4)(vii), and (o)(9) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(6) For a shoreside processor designated on an FPP, or a mothership designated on an FPP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear to fail to submit a timely and complete Pacific Cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(d) \* \* \*

(8) Fail to submit a timely and complete CDQ cost recovery fee submission form and fee as required under § 679.33.

\* \* \* \* \*

(k) \* \* \*

(9) Fail to submit a timely and complete AFA cost recovery fee submission form and fee as required under § 679.66.

(l) \* \* \*

(6) Fail to submit a timely and complete Aleutian Islands pollock cost recovery fee submission form and fee as required under § 679.67.

\* \* \* \* \*

(o) \* \* \*

(4) \* \* \*

(vii) Fail to submit a timely and complete Amendment 80 cost recovery fee submission form and fee as required under § 679.95.

\* \* \* \* \*

(9) *First Wholesale Volume and Value Report.* For an Amendment 80 vessel owner to fail to submit a timely and complete First Wholesale Volume and Value Report as required under § 679.5(u)(2).

\* \* \* \* \*

7. Add § 679.33 to subpart C to read as follows:

**§ 679.33 CDQ cost recovery.**

(a) *Cost Recovery Fee Program for CDQ groundfish and halibut—(1) Who is Responsible?* The person documented with NMFS as the CDQ group representative at the time of a CDQ landing.

(i) Subsequent transfer, under § 679.31(c), of a CDQ allocation by a CDQ group does not affect the CDQ group representative's liability for noncompliance with this section.

(ii) Changes in amount of a CDQ allocation to a CDQ group do not affect the CDQ group representative's liability for noncompliance with this section.

(2) *Fee collection.* Each CDQ group that receives a CDQ allocation of groundfish and halibut is responsible for submitting the cost recovery payment for all CDQ landings debited against that CDQ group's allocations.

(3) *Payment—(i) Payment due date.* A CDQ group representative must submit all CDQ fee payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later

than December 31 of the calendar year in which the CDQ groundfish and halibut landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment website and a fee liability summary letter mailed to the CDQ group representative.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *CDQ standard ex-vessel value determination and use—(1) General.* A CDQ group representative must use the CDQ standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *CDQ standard prices—(i) General.* Each year the Regional Administrator will publish CDQ standard prices for groundfish and halibut in the **Federal Register** by December 1 of the year in which the CDQ groundfish and halibut landings were made. The CDQ standard prices will be described in U.S. dollars per CDQ equivalent pound for CDQ groundfish and halibut landings made during the current calendar year.

(ii) *Effective duration.* The CDQ standard prices published by NMFS shall apply to all CDQ groundfish and halibut landings made during the current calendar year.

(iii) *Determination.* NMFS will calculate the CDQ standard prices for each CDQ fishery as follows:

(A) *CDQ halibut and CDQ fixed gear sablefish*. NMFS will calculate the CDQ standard prices for CDQ halibut and CDQ fixed gear sablefish to reflect, as closely as possible by port or port-group, the variations in the actual ex-vessel values of CDQ halibut and fixed-gear sablefish based on information provided in the IFQ Registered Buyer Ex-vessel Volume and Value Report described at § 679.5(l)(7). The Regional Administrator will base CDQ standard prices on the following information:

(1) Landed pounds of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group;

(2) Total ex-vessel value of IFQ halibut and sablefish and CDQ halibut in the Bering Sea port-group; and

(3) Price adjustments, including retroactive payments.

(B) *CDQ Pacific cod*. NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) for CDQ Pacific cod.

(C) *CDQ pollock*. NMFS will use the standard prices calculated for AFA pollock described at § 679.66(b) for CDQ pollock.

(D) *Other CDQ groundfish including sablefish caught with trawl gear*. (1) NMFS will base all CDQ standard prices for all other CDQ groundfish species on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(2) NMFS will establish CDQ standard prices for all other CDQ groundfish species on an annual basis; except the Regional Administrator will establish a first CDQ standard price for

rock sole for all landings from January 1 through March 31, and a second CDQ standard price for rock sole for all landings from April 1 through December 31.

(3) The average first wholesale product prices reported will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of those CDQ groundfish species.

(c) *CDQ fee percentage*—(1) *Established percentage*. The CDQ fee percentage for CDQ groundfish and halibut is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value*. Each year NMFS will calculate and publish the CDQ fee percentage according to the following factors and methodology:

(i) *Factors*. NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the CDQ groundfish and halibut cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the CDQ Program for groundfish and halibut.

(ii) *Methodology*. NMFS will use the following equations to determine the fee percentage:  $100 \times \text{DPC}/V$ , where:

(A) DPC = the direct program costs for the CDQ Program for groundfish and halibut for the most recent Federal fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B)  $V$  = total of the CDQ standard ex-vessel value of the catch subject to the CDQ fee liability for the current year.

(3) *Publication*—(i) *General*. NMFS will calculate and announce the CDQ fee percentage in a **Federal Register** notice by December 1 of the year in which the CDQ groundfish and halibut landings were made. NMFS will calculate the CDQ fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period*. NMFS will apply the calculated CDQ fee percentage to CDQ groundfish and halibut landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage*. The CDQ group representative must use the CDQ fee percentage applicable at the time a CDQ groundfish and halibut landing is debited from a CDQ group's allocation to calculate the CDQ fee liability for any retroactive payments for that CDQ species.

(5) *Fee liability determination for a CDQ group*. (i) Each CDQ group will be subject to a CDQ fee for any CDQ groundfish and halibut debited from that CDQ group's allocation during a calendar year.

(ii) The CDQ fee assessed to a CDQ group will be based on the proportion of the standard ex-vessel value of CDQ groundfish and halibut debited from a CDQ group's allocation relative to all CDQ groups during a calendar year as determined by NMFS.

(iii) NMFS will provide a CDQ fee liability summary letter to each CDQ group representative by December 1 of each year. The summary will explain the CDQ fee liability determination including the current fee percentage, and details of CDQ pounds debited from the CDQ group allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No CDQ group will receive its allocations of CDQ groundfish or halibut until the CDQ group representative submits full payment of that CDQ group's complete CDQ fee liability.

(2) If a CDQ group representative fails to submit full payment for its CDQ fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CDQ group representative stating that the CDQ group's estimated fee liability, as indicated by his or her own submitted information, is the CDQ fee liability due from the CDQ group.

(ii) Disapprove any application to transfer CDQ to or from the CDQ group in accordance with § 679.31(c).

(3) If a CDQ group fails to submit full payment by December 31 of each year, the Regional Administrator will not issue allocations of CDQ groundfish and halibut to that CDQ group for the following calendar year.

(4) Upon final agency action determining that a CDQ group representative has not paid the CDQ fee liability due for that CDQ group, the Regional Administrator may continue to not issue allocations of CDQ groundfish and halibut for that CDQ group for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment*. Upon issuance of final agency action, payment submitted to NMFS in excess of the CDQ fee liability determined to be due by the final agency action will be returned to the CDQ group representative unless the CDQ group representative requests the agency to credit the excess amount against the CDQ group's future CDQ fee liability.

(f) *Appeals*. A CDQ group representative who receives an IAD for incomplete payment of a CDQ fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report*. Each year, NMFS will publish a report describing the CDQ Cost Recovery Fee Program for groundfish and halibut.

8. In § 679.61,:

a. Revise paragraph (c)(1); and

b. Add paragraph (e)(1)(vi) to read as follows:

**§ 679.61 Formation and operation of fishery cooperatives.**

\* \* \* \* \*

(c) \* \* \*

(1) *What is a designated representative?* The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative. Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, submitting all cost recovery fees, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(vi) List the obligations of members of a cooperative, governed by this section, to ensure the full payment of all AFA fee liabilities that may be due.



\* \* \* \* \*

9. Add § 679.66 to subpart F to read as follows:

**§ 679.66 AFA cost recovery.**

(a) *Cost recovery fee program for AFA*—(1) *Who is responsible for submitting the fee?*

(i) The person designated on the AFA inshore cooperative permit as the designated representative at the time of a Bering Sea pollock landing.

(ii) The person designated as the representative of the entity representing the AFA catcher/processor sector under § 679.21(f)(8)(i)(C) at the time of a Bering Sea pollock landing.

(iii) The person designated as the representative of the AFA mothership cooperative at the time of a Bering Sea pollock landing.

(2) *Responsibility.* (i) Subsequent transfer of AFA permits held by cooperative members does not affect the designated representative's liability for noncompliance with this section.

(ii) Changes in the membership in a cooperative, such as members joining or departing during the relevant year, or changes in the holdings of AFA permits of those members do not affect the designated representative's liability for noncompliance with this section.

(3) *Fee collection.* Each designated representative (as identified under paragraph (a)(1) of this section) is responsible for submitting the cost recovery payment for all Bering Sea pollock landings debited against the AFA cooperative's or AFA sector's AFA pollock fishery allocation.

(4) *Payment*—(i) *Payment due date.* The designated representative (as identified under paragraph (a)(1) of this section) must submit all AFA fee payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than December 31 of the calendar year in which the Bering Sea pollock landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment website and a fee liability summary letter mailed to each designated representative.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *AFA standard ex-vessel value determination and use—(1) General.* A designated representative must use the AFA standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *AFA standard price—(i) General.* Each year the Regional Administrator will publish the AFA standard price in the **Federal Register** by December 1 of the year in which the landings were made. The AFA standard price will be described in U.S. dollars per AFA pollock equivalent pound for Bering Sea pollock landings made by AFA cooperative or AFA sector members during the current calendar year.

(ii) *Effective duration.* The AFA standard price published by NMFS shall apply to all Bering Sea pollock landings made by an AFA cooperative or AFA sector member during the current calendar year.

(iii) *Determination.* NMFS will calculate the AFA standard price to reflect, as closely as possible, the standard price of Bering Sea pollock landings based on information provided in the

COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base the AFA standard price on the following information:

- (A) Landed pounds of Bering Sea pollock;
- (B) Total ex-vessel value of Bering Sea pollock; and
- (C) Price adjustments, including retroactive payments.

(c) *AFA fee percentages*—(1) *Established percentages*. The AFA fee percentages are the amounts as determined by the factors and methodology described in paragraph (c)(2) of this section. These amounts will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. These amounts must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value*. Each year NMFS will calculate and publish AFA fee percentages for AFA inshore cooperatives, the AFA catcher/processor sector, and the AFA mothership cooperative according to the following factors and methodology:

(i) *Factors*. NMFS will use the following factors to determine the fee percentages:

- (A) The catch to which the AFA pollock cost recovery fee will apply;
- (B) The ex-vessel value of that catch; and
- (C) The costs directly related to the management, data collection, and enforcement of the AFA directed pollock fisheries.

(ii) *Methodology*. NMFS will use the following equations to determine the AFA fee percentage:  $100 \times \text{DPC}/V$ , where:

(A) DPC = the direct program costs for the directed AFA pollock fisheries for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the catch subject to the AFA fee liability for the current year.

(iii) Direct program costs will be calculated separately for:

(A) AFA inshore cooperatives;

(B) The AFA catcher/processor sector; and

(C) The AFA mothership cooperative.

(3) *Publication*—(i) *General*. NMFS will calculate and announce the AFA fee percentages in a **Federal Register** notice by December 1 of the year in which the Bering Sea pollock landings were made. AFA fee percentages will be calculated separately for the AFA inshore cooperatives, the AFA catcher/processor sector, and the AFA mothership cooperative. NMFS will calculate the AFA fee percentages based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period*. NMFS will apply the calculated AFA fee percentages to all Bering Sea directed pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage*. A designated representative must use the AFA fee percentage applicable at the time a Bering Sea directed pollock landing is debited from an AFA pollock fishery allocation to calculate the AFA fee liability for any retroactive payments for that landing.

(5) *Fee liability determination.* (i) Each AFA inshore cooperative, the AFA mothership cooperative, and the AFA catcher/processor sector will be subject to an AFA fee liability for any Bering Sea pollock debited from its AFA pollock fishery allocation during a calendar year.

(ii) The AFA fee liability assessed to an AFA inshore cooperative will be based on the proportion of the AFA fee liability of Bering Sea pollock debited from that AFA inshore cooperative's AFA pollock fishery allocation relative to all AFA inshore cooperatives during a calendar year as determined by NMFS.

(iii) The AFA fee liability assessed to the AFA catcher/processor sector will be based on the standard ex-vessel value of Bering Sea pollock debited from the sector's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(iv) The AFA fee liability assessed to the AFA mothership cooperative will be based on the proportion of the standard ex-vessel value of Bering Sea pollock debited from the cooperative's AFA pollock fishery allocation during a calendar year as determined by NMFS.

(v) NMFS will provide a fee liability summary letter to each designated representative by December 1 of each year. The summary will explain the AFA fee liability determination including the current fee percentage and details of Bering Sea pollock pounds debited from the AFA pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No AFA inshore cooperative will receive its AFA pollock fishery allocation until the cooperative's designated representative submits full payment of the cooperative's AFA fee liability.

(2) The AFA mothership cooperative will not receive its AFA pollock fishery allocation until the cooperative's designated representative submits full payment of that cooperative's AFA fee liability.

(3) The AFA catcher/processor sector will not receive its Bering Sea pollock allocation until the entity's designated representative defined at § 679.21(f)(8)(i)(C) submits full payment of the AFA fee liability at the time of a Bering Sea pollock landing, except the Regional Administrator may release to the AFA catcher/processor sector a portion of the AFA catcher/processor sector's Bering Sea pollock allocation that is equal to the portion of the fee liability submitted by the entity's designated representative.

(4) If the designated representative fails to submit full payment for the AFA fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator, at any time thereafter, may send an IAD to the designated representative stating that the estimated fee liability, based on the information submitted by the designated representative, is the AFA fee liability due from the designated representative.

(5) If the designated representative fails to submit full payment for the AFA fee liability by the date described at paragraph (a)(4) of this section, the Regional Administrator will not issue a Bering Sea pollock allocation to that AFA cooperative or AFA sector for the following calendar year, except as provided in paragraph (d)(3) of this section.

(6) Upon final agency action determining that the designated representative has not submitted the AFA fee liability payment, the Regional Administrator may continue to not issue a Bering Sea pollock allocation for that AFA cooperative or AFA sector for any subsequent

calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the AFA fee liability determined to be due by the final agency action will be returned to the designated representative unless the designated representative requests the agency to credit the excess amount against a cooperative's or sector's future AFA fee liability.

(f) *Appeals.* The designated representative who receives an IAD for incomplete payment of an AFA fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the AFA Cost Recovery Fee Program.

10. Add § 679.67 to subpart F to read as follows:

**§ 679.67 Aleutian Islands pollock cost recovery.**

(a) *Cost recovery fee program for Aleutian Islands pollock—(1) Representative.* The person identified as the representative, designated by the Aleut Corporation, at the time of an Aleutian Islands pollock landing is responsible for submitting all cost recovery fees.

(2) *Fee collection.* The designated representative (as identified under paragraph (a)(1) of this section) is responsible for submitting the cost recovery payment for all Aleutian Islands pollock landings made under the authority of Aleut Corporation.

(3) *Payment.* (i) *Payment due date.* The designated representative (as identified under paragraph (a)(1) of this section) must submit all cost recovery fee payment(s) to NMFS at the

address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Aleutian Islands pollock landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment website and a fee liability summary letter mailed to the designated representative of the Aleut Corporation.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Aleutian Islands pollock standard ex-vessel value determination and use—(1) General.* The designated representative of the Aleut Corporation must use the Aleutian Islands pollock standard price determined by NMFS under paragraph (b)(2) of this section.

(2) *Aleutian Islands pollock standard price—(i) General.* Each year the Regional Administrator will publish the Aleutian Islands pollock standard price in the **Federal Register** by December 1 of the year in which the landings were made. The Aleutian Islands pollock standard price will be described in U.S. dollars per Aleutian Islands pollock equivalent pound for Aleutian Islands pollock landings during the current calendar year.

(ii) *Effective duration.* The Aleutian Islands pollock standard price published by NMFS shall apply to all Aleutian Islands pollock landings during the current calendar year.

(iii) *Determination.* NMFS will calculate the Aleutian Islands pollock standard price to reflect, as closely as possible, the standard price of Aleutian Islands pollock landings based on



information provided in the COAR for the previous year, as described in § 679.5(p). The Regional Administrator will base Aleutian Islands pollock standard price on the following information:

- (A) Landed pounds of Aleutian Islands pollock;
- (B) Total ex-vessel value of Aleutian Islands pollock; and
- (C) Price adjustments, including retroactive payments.

(c) *Aleutian Islands pollock fee percentage*—(1) *Established percentage*. The Aleutian Islands pollock fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value*. Each year NMFS will calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors*. NMFS will use the following factors to determine the fee percentage:

- (A) The catch to which the Aleutian Islands pollock cost recovery fee will apply;
- (B) The ex-vessel value of that catch; and
- (C) The costs directly related to the management, data collection, and enforcement of the Aleutian Islands directed pollock fishery.

(ii) *Methodology*. NMFS will use the following equations to determine the fee percentage:  $100 \times \text{DPC}/V$ , where:

(A) DPC = the direct program costs for the Aleutian Islands directed pollock fishery for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the catch subject to the Aleutian Islands pollock fee liability for the current year.

(3) *Publication*—(i) *General*. NMFS will calculate and announce the fee percentage in a **Federal Register** notice by December 1 of the year in which the Aleutian Islands pollock landings were made. NMFS will calculate the Aleutian Islands pollock fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period*. NMFS will apply the calculated Aleutian Islands pollock fee percentage to all Aleutian Islands pollock landings made between January 1 and December 31 of the current year.

(4) *Applicable percentage*. The designated representative must use the Aleutian Islands pollock fee percentage applicable at the time an Aleutian Islands pollock landing is debited from the Aleutian Islands directed pollock fishery allocation to calculate the Aleutian Islands pollock fee liability for any retroactive payments for that pollock.

(5) *Fee liability determination*. (i) The Aleut Corporation will be subject to a fee for any Aleutian Islands pollock debited from the Aleutian Islands directed pollock fishery allocation during a calendar year.

(ii) NMFS will provide a fee liability summary letter to the Aleut Corporation by December 1 of each year. The summary will explain the fee liability determination including the

current fee percentage, and details of Aleutian Islands pollock pounds debited from the Aleutian Islands directed pollock fishery allocation by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) The Aleut Corporation will not receive its Aleutian Islands directed pollock fishery allocation until the Aleut Corporation's designated representative submits full payment of the Aleut Corporation's cost recovery fee liability.

(2) If the Aleut Corporation's designated representative fails to submit full payment for Aleutian Islands pollock fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may at any time thereafter send an IAD to the Aleut Corporation's designated representative stating that the estimated fee liability, based on the information submitted by the designated representative, is the Aleutian Islands pollock fee liability due from the Aleut Corporation.

(3) If the Aleut Corporation's designated representative fails to submit full payment by the Aleutian Islands pollock fee liability payment deadline described at paragraph (a)(3) of this section, the Regional Administrator will not issue the Aleutian Islands directed pollock fishery allocation to the Aleut Corporation for that calendar year.

(4) Upon final agency action determining that the Aleut Corporation has not paid its Aleutian Islands pollock fee liability, the Regional Administrator may continue to not issue the Aleutian Islands directed pollock fishery allocation for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment*. Upon issuance of final agency action, payment submitted to NMFS in excess of the Aleutian Islands pollock fee liability determined to be due by the final agency

action will be returned to the Aleut Corporation unless its designated representative requests the agency to credit the excess amount against the cooperative's future Aleutian Islands pollock fee liability.

(f) *Appeals*. A representative of the Aleut Corporation who receives an IAD for incomplete payment of an Aleutian Islands pollock fee may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report*. Each year, NMFS will publish a report describing the Aleutian Islands Pollock Cost Recovery Fee Program.

11. In § 679.91:

a. Revise paragraphs (b)(4)(vii) and (h)(3)(xiv); and

b. Add paragraph (h)(3)(xx) to read as follows:

**§ 679.91 Amendment 80 Program annual harvester privileges.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vii) *Copy of membership agreement or contract*. Attach a copy of the membership agreement or contract that includes terms that list:

(A) How the Amendment 80 cooperative intends to catch its CQ; and

(B) The obligations of Amendment 80 QS holders who are members of an Amendment 80 cooperative to ensure the full payment of Amendment 80 fee liabilities that may be due.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

* * * * *	
(xiv) Does an Amendment 80 cooperative need a membership agreement or contract?	Yes, an Amendment 80 cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify: (A) How the Amendment 80 cooperative intends to catch its CQ; and (B) The obligations of Amendment 80 QS holders, who are members of an Amendment 80 cooperative, to ensure the full payment of Amendment 80 fee liabilities that may be due.
* * * * *	
(xx) Is there a requirement that an Amendment 80 cooperative pay Amendment 80 cost recovery fees?	Yes, see § 679.95 for the provisions that apply.

\* \* \* \* \*

12. Add § 679.95 to subpart H to read as follows:

**§ 679.95 Amendment 80 Program cost recovery.**

(a) *Cost recovery fee program for Amendment 80*—(1) *Who is responsible?* The person designated as the Amendment 80 cooperative representative at the time of an Amendment 80 CQ landing must comply with the requirements of this section, notwithstanding:

(i) Subsequent transfer of Amendment 80 CQ or Amendment 80 QS held by Amendment 80 cooperative members;

(ii) Non-renewal of an Amendment 80 CQ permit; or

(iii) Changes in the membership in an Amendment 80 cooperative, such as members joining or departing during the relevant year, or changes in the amount of Amendment 80 QS holdings of those members.

(2) *Fee collection.* Each Amendment 80 cooperative representative is responsible for submitting the cost recovery payment for Amendment 80 CQ landings made under the authority of its Amendment 80 CQ permit.

(3) *Payment*—(i) *Payment due date.* An Amendment 80 cooperative representative must submit all Amendment 80 fee liability payment(s) to NMFS at the address provided in paragraph (a)(3)(iii) of this section no later than December 31 of the calendar year in which the Amendment 80 CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee submission form. Payments must be made electronically through the NMFS Alaska Region Website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be made available on both the payment website and a fee liability summary letter mailed to the Amendment 80 CQ permit holder.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearing house, credit card, or electronic check drawn on a U.S. bank account.

(b) *Amendment 80 standard ex-vessel value determination and use*—(1) *General.* An Amendment 80 cooperative representative must use the Amendment 80 standard prices determined by NMFS under paragraph (b)(2) of this section.

(2) *Amendment 80 standard prices*—(i) *General*. Each year the Regional Administrator will publish Amendment 80 standard prices in the **Federal Register** by December 1 of the year in which the Amendment 80 species landings were made. The standard prices will be described in U.S. dollars per Amendment 80 equivalent pound for Amendment 80 species landings made by Amendment 80 CQ permit holders during the current calendar year.

(ii) *Effective duration*. The Amendment 80 standard prices published by NMFS will apply to all Amendment 80 species landings made by an Amendment 80 CQ permit holder during that calendar year.

(iii) *Determination*. NMFS will calculate the Amendment 80 standard prices for Amendment 80 species based on the following information:

(A) *Pacific cod*. NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1).

(B) *Amendment 80 species other than Pacific cod*. (1) The Regional Administrator will base Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on the First Wholesale Volume and Value reports specified in § 679.5(u)(2).

(2) The Regional Administrator will establish Amendment 80 standard prices for all Amendment 80 species other than Pacific cod on an annual basis; except the Regional Administrator will establish a first Amendment 80 standard price for rock sole for all landings from January 1 through March 31, and a second Amendment 80 standard price for rock sole for all landings from April 1 through December 31.

(3) The average first wholesale product prices reported on the First Wholesale Volume and Value reports, specified in § 679.5(u)(2), will be multiplied by 0.4 to obtain a proxy for the ex-vessel prices of Amendment 80 species other than Pacific cod.

(c) *Amendment 80 fee percentage*—(1) *Established percentage*. The Amendment 80 fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register** in accordance with paragraph (c)(3) of this section. This amount must not exceed 3.0 percent pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value*. Each year NMFS will calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors*. NMFS will use the following factors to determine the fee percentage:

(A) The catch to which the Amendment 80 cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the Amendment 80 Program.

(ii) *Methodology*. NMFS will use the following equations to determine the fee percentage:  $100 \times \text{DPC}/V$ , where:

(A) DPC = the direct program costs for the Amendment 80 Program for the most recent fiscal year (October 1 through September 30) with any adjustments to the account from payments received in the previous year.

(B) V = total of the standard ex-vessel value of the landings subject to the Amendment 80 fee liability for the current year.



(3) *Publication*—(i) *General*. NMFS will calculate and announce the Amendment 80 fee percentage in a **Federal Register** notice by December 1 of the year in which the Amendment 80 landings were made. NMFS will calculate the Amendment 80 fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period*. NMFS will apply the calculated Amendment 80 fee percentage to Amendment 80 CQ landings made between January 1 and December 31 of the same year.

(4) *Applicable percentage*. The Amendment 80 CQ permit holder must use the Amendment 80 fee percentage applicable at the time an Amendment 80 species landing is debited from an Amendment 80 CQ allocation to calculate the Amendment 80 fee liability for any retroactive payments for that Amendment 80 species.

(5) *Fee liability determination for an Amendment 80 CQ permit holder*. (i) Each Amendment 80 CQ permit holder will be subject to a fee liability for any Amendment 80 species CQ debited from an Amendment 80 CQ allocation between January 1 and December 31 of the current year.

(ii) The Amendment 80 fee liability assessed to an Amendment 80 CQ permit holder will be based on the proportion of the standard ex-vessel value of Amendment 80 species debited from an Amendment 80 CQ permit holder relative to all Amendment 80 CQ permit holders during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to each Amendment 80 CQ permit holder by December 1 of each year. The summary will explain the fee liability determination including the current fee percentage, and details of Amendment 80 species CQ pounds debited from Amendment 80 CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No Amendment 80 cooperative will receive its Amendment 80 CQ until the Amendment 80 CQ permit holder submits full payment of an applicant's complete Amendment 80 fee liability.

(2) If an Amendment 80 CQ permit holder fails to submit full payment for its Amendment 80 fee by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the Amendment 80 cooperative's representative stating that the Amendment 80 CQ permit holder's estimated fee liability, based on information submitted by the Amendment 80 cooperative's representative, is the Amendment 80 fee liability due from the Amendment 80 CQ permit holder.

(ii) Disapprove any application to transfer Amendment 80 CQ to or from the Amendment 80 CQ permit holder in accordance with § 679.91(g).

(3) If an Amendment 80 cooperative representative fails to submit full payment by the Amendment 80 fee payment deadline described at paragraph (a)(3) of this section:

(i) The Regional Administrator will not issue a Amendment 80 CQ permit to that Amendment 80 cooperative for the following calendar year; and

(ii) The Regional Administrator will not issue Amendment 80 CQ based on the Amendment 80 QS held by the members of that Amendment 80 cooperative to any other CQ permit for that calendar year.

(4) Upon final agency action determining that an Amendment 80 CQ permit holder has not paid his or her Amendment 80 fee, the Regional Administrator may continue to not issue an Amendment 80 CQ permit for any subsequent calendar years until NMFS receives the unpaid

fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the Amendment 80 fee determined to be due by the final agency action will be returned to the Amendment 80 cooperative unless the Amendment 80 cooperative's representative requests the agency to credit the excess amount against the Amendment 80 CQ permit holder's future Amendment 80 fee.

(f) *Appeals.* An Amendment 80 cooperative representative who receives an IAD for incomplete payment of an Amendment 80 fee may appeal under the appeals procedures set out a 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the Amendment 80 Cost Recovery Fee Program.

[FR Doc. 2015-33096 Filed: 1/4/2016 8:45 am; Publication Date: 1/5/2016]